A COMPLETE

SYSTEM OF PLEADING;

COMPREHENDING THE MOST

APPROVED PRECEDENTS and FORMS of PRACTICE;

CONSISTING OF

SUCH AS HAVE NEVER BEFORE BEEN PUBLISHED:

WITH AN

INDEX to the PRINCIPAL WORK,

INCORPORATING AND MAKING IT A CONTINUATION OF

TOWNSHEND's and CORNWALL's TABLES,

TO THE PRESENT TIME;

AS WELL AS AN

INDEX of REFERENCE to all the ANCIENT and MODERN ENTRIES extant.

By JOHN WENTWORTH, Esq.

OF THE INNER TEMPLE, BARRISTER AT LAW.

———*Ne quæ Studio dispôsta fideli*
Intellecta prius quam sint contempta relinquas. LUCRET.

VOL. VIII.

CONTAINING

REPLEVIN. TORT.

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1798.

IN the Five preceding Volumes of the CIVIL DIVISION the Precedents are on the ſeveral Species of *Contracts* that men enter into, and, as we had occaſion to conſider in the Firſt and Third Volumes, related to the moſt general objects of their concerns in life.—We are now arrived at the ſeveral TORTS or TRESPASSES that may be done to a man's *Perſon* or *Property*; and they are conſidered generally as *Contracts* are, *but with greater variety* in the diſtribution relating to the Agriculture, Commerce, and Public Polity or Œconomy of the Country (particularly in the Miniſterial Acts of Public Officers for all Exceſs or Abuſe of Authority.)

With a view to theſe general objects, TORTS or WRONGS are divided into ſuch as relate to *Real* Property, to *Perſonal* Property, and to *Perſons*. Under the firſt, every poſſible wrong committed by *Landlord and Tenant*, Nuiſances to *Lands*, *Houſes*, &c. find place: thoſe are CORPOREAL RIGHTS, (or ſuch as are tangible and viſible) and in nature of *Waſte* for *Dilapidations*; and Nuiſances to INCORPOREAL RIGHTS or ſuch as are not tangible or viſible as the former are: as to a *Right of Common Way*, &c. theſe introduce Wrongs done by *Clergy*, and to *Commoners*, *Occupiers*, and *Inhabitants*, to Perſons holding *Offices*, (from whence ariſe their various relations),

tions), and *the conſequences of Public Nuiſances* for TORT is emphatically called the Action on the *Caſe for conſequential damages*; or *Caſe*, as modern Pleaders have it, or Caſe for Miſbehaviour, or *Misfeaſance* in ſome *Office*, *Truſt*, or *Duty*, as diſtinguiſhed from ASSUMPSIT on Contract, though in fact both are *Caſe*, or *Treſpaſs on the Caſe*.—This deſcription moſt ſtrictly eſtabliſhes the boundaries of Civil Suits; for the Action of Treſpaſs, ſimply denominated *Treſpaſs*, or *Treſpaſs vi et Armis*, is for ſome immediate *Act* or *Tort* done, whereas the former action, or, technically ſpeaking, "TORT," is *for the conſequence of an act done, neglecting* to do ſome act, or *miſbehaving*, as above; and theſe are again diſtinguiſhable from ASSUMPSIT, anciently called *Caſe*, and every other action founded on *Contract*, becauſe thoſe are for *Injuries* ariſing from a violation of ſome engagement, whereas the following Heads of REPLEVIN, TORT, and TRESPASS (conſidering REPLEVIN, as I do, an Action for a *Treſpaſs* to Perſonal Property, the Declaration in Replevin ſo ſtating the act done), are Actions for an *Injury directly done* to the Property or Perſon, *accompanied with Force*; or *the Conſequence* of ſome injurious, *tortious* Act.

The Second Diviſion of TORTS to Perſonal Property, as *Trover*, *Deſcue* (of Diſtreſſes), *exceſſive Diſtreſſes*,—*Immoderate uſe* of Horſes, Cattle, and Goods lent or let to Hire, are the moſt obvious amongſt a great variety of other injuries which expreſsly relate to *Perſonal Property*. But there are a ſet of injuries compounded of thoſe to the Perſon and Perſonal Property alſo;—ſuch as the Action of *De-*

exit in the *Sale or Exchange of Goods*, and on the *Warranty*, *Adultery*, *Criminal Converſation*, *Seducing a Man's Wife*, *Debauching his Daughter*, *Enticing his Apprentice*, — all theſe are plainly *Torts* to the *Perſon* as well as the *Property*. And ſo of a prodigious number of others (for which ſee the ANALYSIS and INDEX, where they are as diſtinctly ranged as it is in my power to do. And hence ariſe the numerous relations, moral and political, as well of *Huſband* and *Wife*, *Parent* and *Child*, *Maſter* and *Servant*,—as of Public Officers in the Execution of the *Laws*, as *Sheriffs*, &c. *Attornies*, *Juſtices* of *Peace*, *Mayors of Corporations* acting in ſome *Miniſterial Capacity*, and the more œconomical relations (conſidered with regard to the political œconomy of the country), as *Carriers* and others (and here another ſet ſpring up, of *Maſters and Owners of Ships*, *Merchant and Factor*, *Conſignor and Conſignee* [but *ſee* TROVER], and others relating to Commerce), *Innkeepers*, &c. upon whom *the law impoſes ſome public duty*.— And all theſe TORTS are reducible to what Lawyers call *Negligence*, *Nonfeaſance*, and *Misfeaſance*, every TORT being a *Misfeaſance*; as for *Negligence* in *driving Carriages* (Proprietors of Coaches, and Coachmen, and Hackney-coachmen); in *Navigating Ships* (Maſters and Owners of Ships, and ſee *ante*, CARRIERS); *Not carrying away Tithes* (Clergy).

The Laſt Diviſion is TORT to a Man's PERSON only, by *defaming* and *libelling* his good *name*, *maliciouſly proſecuting and holding him to Bail*, or *impoſing ſome Criminal Charge upon him*.

It remains to preſcribe one plain direction for the three General Heads compriſed in this and the following Volume of REPLEVIN, TORT, and TRESPASS, that is in *Avowries*, *Cognizances*, *Declarations* in TORT, and *Pleas of Juſtification by Freeholders* in *Treſpaſs*. I have claſſed *Copyholders* and *Cuſtomary Tenants* without otherwiſe diſtinguiſhing them with Freeholders: the latter *being to hold according to the cuſtom of the manor, the freehold in ſuch caſe is in the Tenant*, (*a*) and Avowries by *Commoners* are moſtly *Copyholders*, or *Cuſtomary Tenants*, therefore the Student will do right to turn to *Avowry Damage Feaſant* by *Freeholder*, or by *Commoner* for *Avowry* in REPLEVIN by Copyholder or Cuſtomary Tenant. And the Student will be alike careful to obſerve in REPLEVIN that *Avowries* under *Demiſes Damage Feaſant* being on the *Title* merely, it will be uſeful to run through the *Avowries* for *Rent on Demiſes* in the INDEX for ſuch avowries.

In REPLEVIN, the *Detached Proceedings*, ſuch as Writ, Proceſs, Declaration, Plea of *non cepit*, and Avowry, *Sine Facies*, are placed all together in the INDEX, though the Declaration in REPLEVIN and TRESPASS uſually precede the Plea, for a reaſon given in a former Volume, that the Student may have as much of the Record in one view as poſſible, and for the *partes placitandi*, when wanted, refer to the INDEX; but the *pars placitandi* or form as they occur is *invariably* pointed out *at the top of the ſame page* in every inſtance.

I have not paid much regard to the order of the Precedents in TORT, though they are ſufficiently

(*a*) 2. Bl. Comm 149.

clear

clear for uſe in this Head without the INDEX: Referring, however, to the INDEX, where they are diſtinctly claſſed; all the Precedents in the principal Work are minutely ſubdivided; and the references to the modern and ancient Precedents follow the more General Head, but comprehend all the Subdiviſions under that head, as TORT for *Defamation*, the References contain all the various Precedents under that Head; ſo of TORTS to *Incorporeal* and *Corporeal* Rights, the References follow the more general Heads together, as to *Lands*, *Houſes*, *Lights*, *Water Courſes*, under TORTS to *Corporeal* Rights; by adverting to the INDEX under *either* of theſe Heads the directions will be illuſtrated and appear eaſy. The Sub-diviſions are ſo numerous, the Student will find, merely by turning over the pages, the Precedent wanted from the top of the page; and in any caſe where he is deſirous to find any particular Form or Precedent, by conſulting the Prefatory Matter to the Volume, which contains the General Head, the Author hopes he may be permitted to ſay, that it may eaſily be found by the directions preſcribed, and the clearneſs of the arrangement, in a Work of which the chief object is its *practical utility*.

J. WENTWORTH.

Inner Temple,
26th Aug. 1798.

PUBLIC LIBRARY 1859

REPLEVIN.

AVOWRIES AND COGNIZANCES BY FREEHOLDERS, COPYHOLDERS, DAMAGE FEASANT, AND PLEAS IN BAR.

In the Common Pleas, Trinity Term, 28. Geo. III.

SURRY, to wit. William Woodhatch, late of the pariſh of Woking, in the county aforeſaid, yeoman, was ſummoned to anſwer to Thomas Baker of a plea, wherefore he took the cattle of the ſaid Thomas and unjuſtly detained them againſt ſureties and pledges; and whereupon the ſaid Thomas B. by Thomas Sibthorp, his attorney, complains, that the ſaid William, on the thirty-firſt of March, A. D. 1788, at the pariſh of Woking, in the ſaid county of Surry, in a certain cloſe there of the ſaid Thomas B. commonly called or known by the name of Highland's Fields, took the cattle of the ſaid Thomas B. to wit, ſix ewes, ſheep of the ſaid Thomas B. of the value of twenty pounds, there then found and being, and unjuſtly detained them againſt ſureties and pledges until, &c.; whereupon the ſaid Tho. B. ſaith that he is injured, and hath ſuſtained damage to the value of twenty pounds, and thereupon he brings ſuit, &c.: And the ſaid William, by Thomas Holloway, his attorney, comes and defends the wrong and injury, when, &c. and as bailiff of Amey Head, widow, well acknowledges the taking of the ſaid cattle in the ſaid declaration mentioned, in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that the ſaid place in which, &c. now is, and at the ſame time when, &c. was, and from time whereof the memory of man is not to the contrary hath been, within and parcel of the ſaid manor of Woking, in the ſaid county of S. and cuſtomary land of the ſaid manor, demiſed and demiſeable by copy of the court rolls of the ſame manor by the lord of the ſaid manor, or by his ſteward of the court of the ſaid manor for the time being, to any perſon or perſons willing to take the ſame in fee ſimple for life or otherwiſe, at the will of the lord of the ſaid manor, accord-

Declaration replevin for taking ſheep.

1ſt Cognizance as bailiff, that the *locus in quo* * was the freehold of A. H. and that he took ſheep damage feaſant therein.

* The *locus in quo* appeared to be a cuſtomary freehold; therefore there were ſeveral cognizances, ſtating the freehold in different ways.

ing to the cuſtom of the ſaid manor; and that long before the ſaid time when, &c. to wit, on the thirteenth of October 1758, the right honourable Richard lord Onſlow, now deceaſed, then being lord of the ſaid manor, at his court held *in and for* the ſaid manor, before John Chatfield, gentleman, then ſteward of the ſaid court, by copy of the court rolls of the ſaid manor, granted to the ſaid Amey Head, the ſaid place in which, &c. amongſt other things, to hold to the ſaid Amey Head, "her heirs and aſſigns," *for and during the term of her natural life*, that is, at the will of the lord of the ſaid manor, according to the cuſtom of the ſaid manor, by virtue of which ſaid grant the ſaid Amey H. afterwards, and before the time when, &c. to wit, at the day and year laſt aforeſaid, entered into the ſaid place in which, &c. and became, and was, and ſtill is, thereof ſeiſed in her demeſne as "of fee" *freehold, for and during the term of her natural life*, at the will of the lord of the ſaid manor according to the cuſtom of the ſaid manor; and becauſe the ſaid cattle at the ſaid time when, &c. were in the ſaid place in which, &c. eating up and depaſturing the graſs there then growing, and doing damage there, he the ſaid William as bailiff of the Amey H. well acknowledges the taking of the ſaid cattle in the ſaid place in which, &c. and juſtly, &c. ſo doing damage there, &c.; and this he is ready to verify; wherefore he prays judgment and a return of the ſaid cattle, together with his coſts and charges, according to the form of the ſtatute in ſuch caſe made and provided, to be adjudged to him, &c.: And for a further cognizance in this behalf the ſaid William, by leave of the court here to him for that purpoſe granted, according to the form of the ſtatute in ſuch made and provided, as bailiff of the ſaid Amey H. well acknowledges, &c. [as in the firſt cognizance, except the words in Italic, which are to be omitted, and inſerting the words within inverted commas]: Third cognizance, like cognizance, as bailiff of Amey H.; becauſe he ſays, that the ſaid place in which, &c. now is, and at the ſaid time when, &c. was the cloſe, ſoil, and freehold of the ſaid Amey H.; and becauſe the ſaid cattle at the ſaid time when, &c. were in the ſaid place in which, &c. eating up, &c. &c. [as in the above cognizance to the end.]

Cognizance.

GEORGE BOND.

Mr. Maryat originally drew only the laſt of the three cognizances, and wrote the following opinion:

I have judged it more adviſeable to make cognizance as bailiff of Mrs. Head, than to avow upon the defendant's own title as her leſſee; becauſe, not having any inſtructions as to the terms of his tenancy, I might miſtake the demiſe, and expoſe the defendant to an unfavourable iſſue. I think the cognizance may ſtand ſingle, the language of the admiſſion imports the eſtate to be a *cuſtomary freehold*, and not as *copyhold*, being to hold according to the cuſtom of the manor, and not at the will of the lord; and it is laid down by Bl. in the 2d vol. of his Comm. p. 149. that the freehold in ſuch caſe is in the tenant; and ſeveral authorities are there referred to in ſupport of the propoſition. It is, however, very equivocal upon the will recited in the admiſſion what eſtate paſſed under it to Mrs. H. but it will not be material to enquire minutely into this point, unleſs the title ſhould be put in iſſue by the plaintiff's plea in bar (*a*). On the facts ſtated to me I think the diſtreſs was juſtifiable, and conſequently that Mr. Woodhatch may defend this action.

SAMUEL MARRYAT.

(*a*) See Plea in Bar, *infra*.

It is extremely queſtionable to me what eſtate the widow took under the will of her huſband, that is, whether it was a fee or barely an eſtate for life; and on the admiſſion they ſeem to have had this doubt, as ſhe is there admitted only according to the deviſe in her huſband's will, be that what it may. If this is clear I ſhould adviſe the addition of a ſecond cognizance, ſtating that the lands were copyhold, held of the manor of W. and that the lord had granted the eſtate to her for life, or in fee, &c. and perhaps if an order for this could now be got, two more avowries, one ſtating a grant in fee, and the other a grant for life, would be adviſeable: For if the plaintiff ſhould put our title in iſſue I am not ſatisfied the preſent avowry, which ſtates it to be the *cloſe, ſoil, and freehold* of Mrs. H. would be ſafe; for, though as Mr. Marryat has very appoſitely ſtated, a copyhold admiſſion, not ſaid *to be held at the will of the lord*, hath been ſhewn by J. Black. to be a ſort of cuſtomary freehold, yet it is not ſuch a freehold as comes under the idea of cloſe, ſoil, and freehold, for that I apprehend means a freehold *tenure, and a* freehold *intereſt*, held by common law conveyances, and not that ſpecies of equivocal freehold to be found in ſome few parts of England, and ranked under the idea of cuſtomary freehold of a baſe tenure. Perhaps alſo the admiſſion of the ſaid Mrs. H. omitting the words, *at the will of the lord*, is a mere miſtake of the ſteward, and if ſo we ſhould be gone on a traverſe of the title; for unleſs the cuſtom hath uniformly been to admit in this way, and the tenement in queſtion, as well as the other tenancies of the manor, have thoſe badges of privileged villenage that conſtitute a cuſtomary freehold, we ſhall be gone, as none of theſe eſtates without badges of this ſort can be deemed *freehold*. I therefore am not willing to rely upon this cognizance *alone*, unleſs we can be ſure theſe copyholds are of the freehold deſcription, by conſulting the rolls of the manor. The cognizances I have pointed out ſeem to be proper. The terms on which Mr. Woodhatch holds from Mrs. H. are ſo obſcurely ſtated, that I conceive it is better to make cognizance as bailiff than to avow in Woodhatch's own right. As Baker took Cock Stump's Mead into his own occupation at Chriſtmas, and thereby relinquiſhed the *locus in quo*, I think the diſtreſs warranted in point of law on what is ſtated, and we ſhould therefore be more cautious as to our avowry.

GEORGE BOND.

The two firſt cognizances were added in conformity to this opinion, which the Serjeant read and approved, and ſaid he thought neceſſary to be pleaded, unleſs the plaintiff would engage not to controvert the title.

And the ſaid Thomas B. as to the cognizance of the ſaid William Woodhatch by him firſt above made, ſays, that the ſaid William by reaſon of any thing in that cognizance alledged ought not to acknowledge the ſaid taking of the ſaid cattle in the ſaid declaration mentioned, in the ſaid place in which, &c. to be juſt; becauſe he ſays, that although true it is that the ſaid place in which, &c. is, and at the ſaid time when, &c. was, and from time whereof the memory of man is not to the contrary, hath been within and parcel of the ſaid manor of Woking, in the ſaid county of S. and cuſtomary land of the ſaid manor, demiſed and demiſeable by copy of court rolls of the ſaid manor, by the lord of the ſame manor, or by his ſteward of the court of the ſaid manor for the time being, in manner and form as the ſaid William hath in his ſaid firſt cognizance in that behalf above alledged; and that the ſaid right honourable Richard late lord Onſlow, deceaſed, granted to the ſaid Amey H. the ſaid place in which, &c. amongſt other things, to hold the ſame to the ſaid Amey H. for and during the term of her natural life, at the will of the lord of the ſaid manor, according

Plea in bar to the 1ſt cognizance, that H demiſed premiſes year to year one James and that plaintiff holds *locus in quo* under a miſe from M.

to the cuſtom of the ſaid manor; and that the ſaid A. H. by virtue of the ſaid grant entered into the ſaid place in which, &c. and became, and was, and ſtill is, thereof ſeiſed, in manner and form as in the ſaid firſt cognizance is above alledged; nevertheleſs for a plea in bar in this behalf the ſaid Thomas ſays, that the ſaid Amey H. after the ſaid grant of the ſaid place in which, &c. and after ſhe became ſo ſeiſed thereof as aforeſaid, and before the ſaid time when, &c. to wit, on the twenty-ninth of September 1776, at the pariſh of W. aforeſaid, in the ſaid county of S. did demiſe the ſaid place in which, &c. amongſt other things, to one James Manſell, to have and to hold the ſame to the ſaid James for and during the term of one year from thence next enſuing, and ſo on from year to year for ſo long a time as the ſaid Amey H. ſhould pleaſe, at a certain yearly rent to be paid by the ſaid James to the ſaid A. H. for the ſame: And the ſaid Thomas further in fact ſays, that the ſaid James, after the making of the ſaid demiſe, and by virtue thereof, before the ſaid time, when, &c. to wit, on the ſame day and year laſt aforeſaid, at the pariſh aforeſaid, in the county aforeſaid, entered into the ſaid place in which, &c. and the ſaid other things ſo demiſed, and became and was poſſeſſed thereof for the ſaid term to him thereof demiſed; and that the ſaid James being ſo thereof poſſeſſed, he the ſaid James afterwards, and during the continuance of the ſaid term, and before the ſaid time when, &c. to wit, on the twenty-ninth of September 1785, at the ſaid pariſh aforeſaid, in the county aforeſaid, demiſed the ſaid place in which, &c. to him the ſaid Thomas Baker, to have and to hold the ſame to him the ſaid Thomas for and during the term of one year from thence next enſuing, and ſo on from year to year, for ſo long a time as the ſaid James and he the ſaid Thomas ſhould pleaſe, if the term and intereſt of him the ſaid James in the ſaid place in which, &c. ſhould ſo long continue, at and under a certain yearly rent, to be paid by the ſaid Thomas to the ſaid James for the ſame: And the ſaid Thomas further in fact ſays, that the term and intereſt of him the ſaid James in the ſaid place in which, &c. did continue until the ſaid time when, &c. and that he the ſaid Thomas, by virtue of the ſaid laſt-mentioned demiſe, to wit, on the ſame day and year laſt aforeſaid, in the pariſh aforeſaid, in the county aforeſaid, entered into the ſaid place in which, &c. ſo demiſed to him as aforeſaid, and became and was poſſeſſed thereof, and remained and continued ſo poſſeſſed thereof under and by virtue of the ſaid demiſe until the ſaid William of his own wrong, at the ſaid time when, &c. took the cattle of him the ſaid Thomas in the ſaid declaration mentioned, in the ſaid place in which, &c. and unjuſtly detained them againſt ſureties and pledges, in manner and form as he the ſaid Thomas hath above thereof complained againſt him the ſaid William; and this he the ſaid Thomas is ready to verify; wherefore he prays judgment and his damages aforeſaid, by occaſion of the premiſes, to be adjudged to him, &c.: And the ſaid T. B. as to the cognizance of the ſaid William by him ſecondly above made, ſays, that the ſaid William, by reaſon of any thing in that cognizance

1 to 2d cognizance.

nizance alledged, ought not to acknowledge, &c. &c. [exactly like the firſt plea in bar, only confeſſing a grant for life inſtead of a grant in fee]: And the ſaid Thomas B. as to the cognizance of the ſaid William, by him laſtly above made, ſays, that although true it is that the ſaid place in which, &c. is, and at the ſaid time when, &c. was, the cloſe, ſoil, and freehold of the ſaid A. H. as he the ſaid William hath in his laſt cognizance above alledged; nevertheleſs for a plea in bar in this behalf, the ſaid Thomas ſays, that the ſaid A. H. long before the ſaid time when, &c. to wit, on the twenty-ninth of September 1776, at the pariſh of W. aforeſaid, in the ſaid county of Surry, did demiſe the ſaid place in which, &c. amongſt other things, to James Manſell, for and during the term of one year from thence next enſuing, and ſo on from year to year, for ſo long time as the ſaid A. and the ſaid James ſhould pleaſe, at a certain yearly rent, &c. &c. &c. [to the end like the firſt plea in bar.]

Plea to 3d cognizance.

S. LE BLANC.

And the ſaid William, as to the ſaid pleas above reſpectively pleaded by the ſaid Thomas in bar to the ſeveral cognizances above made by the ſaid William, ſays, that he by reaſon of any thing in thoſe pleas or either of them alledged, ought not to be barred from maintaining his ſaid ſeveral cognizances in that behalf; becauſe though true it is that the ſaid A. H. did demiſe the ſaid place in which, &c. amongſt other things, to the ſaid James M. and that the ſaid James M by virtue of ſuch demiſe, entered and demiſed the ſaid place in which, &c. to the ſaid Thomas, and that the ſaid Thomas alſo entered thereon, as in the ſaid pleas is alledged; yet for replication in this behalf, the ſaid William ſays, that the ſaid James M. afterwards, and before the ſaid time when, &c. to wit, on the twenty-fourth of October 1787, at the pariſh aforeſaid, ſurrendered and yielded up the ſaid place in which, &c. amongſt the ſaid other things ſo demiſed to him by the ſaid A. H. as in the ſaid plea is mentioned, and all his term and intereſt therein unto the ſaid Amey H. who then and there accepted of ſuch ſurrender, whereof the ſaid Thomas afterwards, and before the ſaid time when, &c. to wit, on the day and year laſt aforeſaid, at the pariſh aforeſaid, had notice, without this, that the term and intereſt of him the ſaid James M. in the ſaid place in which, &c. did continue until and at the ſaid time when, &c. in manner and form as the ſaid Thomas hath in and by his ſaid pleas in that behalf alledged; and this the ſaid William is ready to verify; wherefore, as before, he prays judgment, and a return of the ſaid cattle, together with his coſts and charges, according to the form of the ſtatute in ſuch caſe made and provided, to be adjudged to him, &c.

Replication all the pleas traverſing continuance the term in M. to the when, &c.

GEORGE BOND.

I have in this replication endeavoured to ſhorten the pleadings which have been already drawn out to a conſiderable length for ſo unimportant a diſpute, by making one general replication to all the pleas in bar, which, on compariſon, appear to have been

been pleaded exactly alike to each of the cognizances. I never before knew this to be done before in practice, but can see no sort of objection to it in point of law, and apprehend it will not only meet with the approbation of the Serjeant, by whom the replication must be settled and signed, but would also be countenanced if ever its propriety should be questioned. With respect to Mrs. H.'s title it is now perfectly out of dispute, and the only point that can come in issue is the continuance of M.'s tenancy under her, which of course depends upon the fact of his surrender; and it appears to me upon the circumstances stated in my instructions, that the defendant will prevail upon the trial. If the Serjeant should be of the same opinion, and the defendant wishes it, he may deliver the issue when complete, and carry down the record himself to the assizes; but I doubt whether he can by the strict practice of the court of common pleas add an issue for the plaintiff upon the traverse taken, though if the plaintiff should pay for an issue book so delivered, he certainly cannot afterwards object.

SAMUEL MARRYAT.

Rejoinder, traversing the surrender up of premises, (amongst other things, &c.) demised to A. H.

And the said Thomas, as to the plea of the said William by him above pleaded in reply to the said pleas of him the said Thomas above respectively pleaded in bar to the several cognizances above made by the said William, says, that he the said Thomas, by reason of any thing by the said William in his said replication above alledged, ought not to be barred from having and maintaining his aforesaid action against the said William; because protesting, that the said replication of the said William, and the matters therein contained, are not sufficient in law to bar him the said Thomas from having and maintaining his aforesaid action against the said William; and that he the said Thomas is not under any necessity, or in anywise bound by the laws of this realm to answer thereto; nevertheless for rejoinder in this behalf, the said Thomas says, that the said James M. before the said time when, &c. did not surrender and yield up the said place in which, &c. amongst the said other things, so demised to him by the said Amey Head, and all his term and interest therein, unto the said A. H. in manner and form as the said William hath in his said replication above alledged; and this the said Thomas prays may be enquired of by the country, &c.

Demurrer to the rejoinder.

And the said William, as to the said rejoinder of the said Thomas by him above pleaded, says, that the said rejoinder, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar the said William from maintaining his said several cognizances in that behalf; and that he the said William is not under any necessity, nor in anywise bound by the law of the land to answer the said rejoinder; and this he is ready to verify; wherefore for want of a sufficient rejoinder in this behalf, he as before prays judgment and a return of the cattle, together with his costs and charges, according to the form of the statute in such case made and provided, to be adjudged to him, &c.; And for causes of demurrer in law, the said William, according to the form of the statute in such case made and provided, sets down and shews to the court here the causes following, that is to say, for that although the said William has concluded his replication with a direct traverse of a material

terial fact alledged by the pleas in bar of the ſaid Thomas, yet the ſaid Thomas has not by his ſaid rejoinder taken or tendered any iſſue upon the fact ſo traverſed, but has attempted to put in iſſue matter alledged in the ſaid replication merely by way of inducement to the ſaid traverſe: And for that the ſaid T. has by his ſaid rejoinder attempted to put in iſſue matter that is altogether unifſuable, and particularly whether the ſaid James ſurrendered other places than the ſaid place in which, &c. to the ſaid A. H. which is a point wholly immaterial and irrelevent in this cauſe; and for that the ſaid rejoinder does not maintain the ſaid pleas in bar of the ſaid Thomas, but is a departure therefrom, and tends to an unneceſſary prolixity in pleading; and for that the ſaid Thomas, although he has by his ſaid rejoinder denied only one of the matters alledged in the ſaid replication, has nevertheleſs concluded his ſaid rejoinder to the country, inſtead of concluding it with a verification, which he ought to have done; and for that the ſaid rejoinder is in various other reſpects uncertain, inſufficient, and informal, &c.

I have demurred to the rejoinder in this caſe, being clearly of opinion that it is bad on the grounds aforeſaid for cauſe; for I take it to be a general rule in pleading, that when a traverſe is properly taken upon any material allegation, an iſſue can be taken only on the fact traverſed, and not on any matter alledged by way of inducement. Vide Bac. Abr. 72 and 73. It alſo ſtrikes me as a further objection to the rejoinder, that it attempts to put in iſſue the fact of Manſell's having ſurrendered up to Mrs. H. *other lands* beſides the *locus in quo*, which is all that can be material to the preſent action.

SAMUEL MARRYAT.

AND the ſaid Simon, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and in his own right well avows, and as bailiff of William Bishop, well acknowledges the taking of the ſaid goods and chattels in the ſaid cloſe in which, &c. and juſtly, &c.; becauſe he ſays, that the ſaid cloſe in which, &c. before, and at the ſaid time when, &c. was a cloſe of arable land, lying and being at W. aforeſaid, in the county aforeſaid, and called as well by the name of Nettlemeſted as by the name of Bailey Cloſe, and that long before the ſaid time when, &c. to wit, on, &c. A. D. 1776, the right honourable E. T. earl of Winterton was, and from thenceforth hitherto hath been, and ſtill is, ſeiſed in his demeſne as of fee of and in the ſaid cloſe in which, &c. with the appurtenances, amongſt other things, and being ſo ſeiſed, he the ſaid E. T. earl of W. before the ſaid time when, &c. to wit, on, &c. A. D. 1776, at W. aforeſaid, demiſed the ſaid cloſe of land in which, &c. with the appurtenances, amongſt other things, to the ſaid W. B. and the ſaid Simon, to hold the ſame to them the ſaid W. B. and Simon from that day for one year then next enſuing, and ſo on from year to year for ſo long a time as the ſaid E. T. earl of W. W. B and Simon ſhould pleaſe; by virtue of which ſaid demiſe the ſaid W. B. and Simon afterwards, and before the ſaid time when, &c. to wit, on, &c. at, &c. entered

Avowry cognizance one joint in his own and as bail the other ants, to owner of fee from year, ſo both ple that he took two waggon their cloſe cumbering ſame, and vering and ing the gra a diſtreſs,

tered into the ſaid cloſe in which, &c. with the appurtenances, amongſt other things, and at the ſaid time when, &c. were and ſtill are poſſeſſed thereof; and becauſe the ſaid two waggons in the ſaid declaration mentioned, at the ſaid time when, &c. were in the ſaid cloſe in which, &c. incumbering the ſame and taking up room there, and covering and ſpoiling the graſs and ſoil of the ſaid W. B. and Simon there, and doing damage to the ſaid W. B. and Simon there, he the ſaid Simon in his own right well avows, and as bailiff of the ſaid W. B. well acknowledges the ſaid taking of the ſaid two waggons at the ſaid time when, &c. in the ſaid place in which, &c. ſo incumbering the ſaid cloſe and taking up room there, and ſo doing damage there to the ſaid W. B. and Simon, and juſtly, &c. as and for a diſtreſs for the ſaid damage ſo there done and doing, &c.: And for a further avowry, he the ſaid Simon, by leave of, &c. &c. &c. [Same as the firſt, only omitting every thing relative to William Biſhop.]

Avowry, ſtating it to be his own demiſe, and ſtiring his co-plaint.

Plea in bar thereto, that the plaintiff ſent his cattle, horſes, and waggons to eat the tithe growing in the place *in quo*, being the farmer of the ſame for the term of ten years under the heir at law of a perſon of whom the ſame had been occupied for three years by the biſhop of Ely, the ſame in fee in right of his biſhopric. The ſaid title ſet forth particularly.

And the ſaid Peter, as to the ſaid avowry and cognizance of the ſaid Simon by him firſt above made, ſays, that the ſaid Simon, by reaſon of any thing therein alledged, ought not in his own right to avow, nor as bailiff of the ſaid W. B. to acknowledge the taking of the ſaid goods and chattels in the ſaid cloſe in which, &c. to be juſt; becauſe he the ſaid Peter ſays, that M. late lord Biſhop of Ely, in his lifetime, long before the ſaid time when, &c. to wit, on, &c. at, &c. in, &c. was ſeiſed as of fee and right, in right of his ſaid biſhoprick, of and in all and ſingular the tithes of corn yearly growing, coming, and renewing in and upon the ſaid cloſe in which, &c. and being ſo thereof ſeiſed, he the ſaid M. late lord biſhop of Ely, in his lifetime, long before the ſaid time when, &c. to wit, on, &c. at, &c. in, &c. demiſed to one E. W. amongſt other things, the ſaid tithes, with the appurtenances, to have and to hold the ſame to the ſaid E. W. his heirs and aſſigns, from the making of the ſaid demiſe for and during the natural life and lives of A. E. W. S. C. and W. F. and for and during the life of the longeſt liver of them, by virtue whereof the ſaid E. W. became ſeiſed of the ſaid tithes, with the appurtenances, as of freehold, for the lives of the ſaid A. E. W. S. C. and W. F. and for the life of the longeſt liver of them; and being ſo thereof ſeiſed afterwards, and during the lives of the ſaid A. E. W. S. C. and W. F. and before the ſaid time when, &c. to wit, on, &c. at, &c. in, &c. the ſaid E. W. died ſo ſeiſed of and in the ſaid tithes, with the appurtenances as aforeſaid, upon whoſe death the ſaid tithes, with the appurtenances, deſcended and came to S. W. the only ſurviving ſiſter and heir at law of the ſaid E. W.; and thereupon the ſaid S. W. afterwards, and before the ſaid time when, &c. and during the lives of the ſaid A. E. W. S. C. and W. F. to wit, on, &c. at, &c. in, &c. entered upon the ſaid tithes, with the appurtenances, and was and yet is thereof ſeiſed as of freehold, for the lives of the ſaid A. E. W. S. C. and W. F. and for the life of the longeſt liver of them;

and

and being ſo thereof poſſeſſed, the ſaid S. W. afterwards, and before the ſaid time when, &c. during the lives of the ſaid A. E. W. S. C. and W. F. to wit, on, &c. at, &c. in, &c. demiſed the ſaid tithes, with the appurtenances, amongſt other things, to the ſaid Peter, to hold the ſame unto the ſaid Peter from Michaelmas day then laſt paſt, according to the old ſtile and computation of time formerly uſed within this kingdom; unto the full end and term of ten years from thence next enſuing, and fully to be complete and ended if the eſtate of the ſaid Sarah ſhould ſo long therein continue, and which ſtill doth continue; by virtue of which ſaid laſt-mentioned demiſe the ſaid Peter afterwards, and before the ſaid time when, &c. to wit, on, &c. at, &c. in, &c. entered upon the ſaid tithes, with the appurtenances, and from thenceforth until and at the ſame time when, &c. was and ſtill is thereof poſſeſſed, and being ſo thereof poſſeſſed, the tithe of certain barley growing in and upon the ſaid cloſe in which, &c. in the ſaid A. D. 1779, and which in that year before the ſaid time when, &c. had been cut down and reaped before the ſaid time when, &c. to wit, on, &c. was divided, reaped, and ſet out from the reſidue of the ſaid barley there, and was lying and being there for the uſe of the ſaid Peter, the farmer and occupier thereof as aforeſaid; by reaſon whereof the ſaid Peter, a little before the ſaid time when, &c. to wit, on, &c. ſent his ſervant and horſes with the ſaid two waggons in the ſaid declaration mentioned into the ſaid cloſe in which, &c. for the purpoſe of taking and carrying away the ſaid barley ſo as aforeſaid divided, ſeparated, and ſet out for the tithe aforeſaid there then being and remaining as aforeſaid, as it was lawful for him to do, and the ſaid two waggons were in the ſaid cloſe in which, &c. on the occaſion aforeſaid, until the ſaid Simon at the ſaid time when, &c. took and unjuſtly detained the ſame againſt ſureties and pledges, in manner and form as the ſaid Peter hath above thereof complained againſt him; and this, &c.; wherefore, &c. and his damages by reaſon of the taking and unjuſt detaining of his ſaid goods and chattels to be adjudged to him, &c.: And the ſaid Peter, as to the ſaid avowry of the ſaid Simon by him ſecondly above made, &c. [ſame as the laſt, only pleading to the ſecond avowry, without mentioning any thing of W. B.] Plea in bar to the ſecond avowry ſame as the laſt, only omitting mention of the other co-tenant

And the ſaid Simon, as to the ſaid plea of the ſaid Peter by him above pleaded to the ſaid avowry and cognizance of him the ſaid Simon by him firſt above made, as to the ſaid taking of one of the ſaid two waggons in the ſaid declaration mentioned, which in this replication is by the ſaid Simon by way of diſtinction called, ſays, that he, by reaſon of any thing in that plea alledged, ought not to be barred from avowing and acknowledging of the taking of one of the ſaid two waggons in the ſaid declaration mentioned in the ſaid place in which, &c. to be juſt; Replication to the plea of the ſaid avowry, that one of the waggons, at the plea, that after waggon loaded it was tained an unreaſonable length of time, therefore they took it doing damage to the graſs and

becauſe

becauſe he ſays, that true it is that the ſaid M. late lord biſhop of Ely in his lifetime, was ſeiſed as of fee and right in right of his ſaid biſhoprick of and in all and ſingular the tithes of corn yearly growing, coming, and renewing in and upon the ſaid cloſe in which, &c. and that he demiſed the ſame to the ſaid E. W. his heirs and aſſigns, in manner and form as by the ſaid plea in bar is above in that behalf alledged; and that the ſaid E. W. died ſeiſed of the ſaid tithes in manner and form as by the ſaid plea in bar is above alledged; and that on the deceaſe of the ſaid E. W. the ſaid tithes deſcended and came to the ſaid S. W. and that the ſaid S. W. was ſeiſed of the ſaid tithes, and demiſed the ſame to the ſaid Peter in manner and form as the ſaid Peter hath above in his ſaid plea in bar above alledged; and that the ſaid Peter, by virtue of that demiſe, entered upon the ſaid tithes, and until and at the ſaid time when, &c. was and ſtill is thereof poſſeſſed, and that being ſo thereof poſſeſſed, the tithe of certain barley growing in and upon the ſaid cloſe in which, &c. A. D. 1779, and which in that year before the ſaid time when, &c. had been cut down and reaped, and was divided, ſeparated, and ſet out from the reſidue of the ſaid barley for the uſe of the ſaid Peter, and that by reaſon thereof the ſaid Peter, before the ſaid time when, &c. ſent his ſervants and horſes with that ſaid one of the two waggons in the ſaid declaration mentioned into the ſaid cloſe in which, &c. for the purpoſe in the ſaid plea in bar in that behalf mentioned, as the ſaid Peter hath above in his ſaid plea in bar in that behalf alledged: but the ſaid Simon further ſaith, that one of the ſaid waggons in the ſaid declaration mentioned ſo being in the ſaid cloſe in which, &c. under the pretence aforeſaid, after the ſame was ſo brought into the ſaid cloſe in which, &c. and before the ſaid time when, &c. was there fully loaded with the ſaid barley tithe, and that waggon ſo loaded as aforeſaid was kept and detained by the ſaid ſervants of the ſaid Peter in the cloſe in which, &c. for a long and unreaſonable time, to wit, for the ſpace of four hours next after the ſame was ſo loaded as aforeſaid, and before the ſaid time when, &c. was of the proper wrong of the ſaid Peter in the ſaid cloſe, in which, &c. taking up room there and incumbering the ſaid cloſe, and doing damage there to the ſaid Simon and W. B. for which reaſon the ſaid Simon in his own right, and as bailiff of the ſaid W. B. after that waggon had been ſo loaded as aforeſaid, and after the end and expiration of a reaſonable time was elapſed after the ſaid loading of the ſaid tithe barley, for the taking and removing that waggon out of the ſaid cloſe in which, &c. to wit, at the ſaid time when, &c. in his own right, and as bailiff of the ſaid William Biſhop, took the ſaid waggon, being one of the ſaid waggons in the ſaid declaration mentioned in the ſaid cloſe in which, &c. ſo taking up room there, and incumbering the ſaid cloſe, and doing damage there to the ſaid Simon as a diſtreſs for the ſaid damage ſo there done and doing by the ſaid waggon, and detained the ſame until, &c. as the ſaid Simon lawfully [illegible] for the cauſe aforeſaid; and this, &c.; wherefore,

&c.

&c. and a return of that one of the ſaid waggons, together with his damages, &c. according to the form of the ſtatute to be adjudged to him, &c.: And the ſaid Simon, as to the ſaid plea of the ſaid Peter by him above pleaded in bar, as to the ſaid avowry and cognizance of the ſaid Simon by him firſt above made as to the taking of the other of the two ſaid waggons in the ſaid declaration mentioned, ſays, that he, by reaſon of any thing in that plea alledged, ought not to be barred from avowing and acknowledging the ſaid taking of that other of the ſaid two waggons in the ſaid place in which, &c. as juſt; becauſe he ſays, that true it is that the ſaid M. late lord biſhop of Ely in his lifetime, was ſeiſed as of fee and right in right of his ſaid biſhoprick, of and in all and ſingular the tithes of corn yearly growing, coming, and renewing in and upon the ſaid cloſe in which, &c. and that he demiſed the ſame to the ſaid E. W. his heirs and aſſigns, in manner and form as by the ſaid plea in bar is above alledged, and that on the deceaſe of the ſaid E. W. the ſaid tithes deſcended and came to the ſaid S. W. and that the ſaid S. W. was ſeiſed of the ſaid tithes, and demiſed the ſame to the ſaid Peter in manner and form as the ſaid Peter hath above in his ſaid plea in bar above alledged; and that the ſaid Peter, by virtue of that demiſe, entered upon the ſaid tithes until and at the ſaid time when, &c. and was and ſtill is ſo thereof poſſeſſed, and that being ſo thereof poſſeſſed, the tithe of certain barley growing in and upon the ſaid cloſe in which, &c. A. D. 1779, and which in that year before the ſaid time when, &c. had been cut down and reaped, and was divided, ſeparated, and ſet out from the reſidue of the ſaid barley for the uſe of the ſaid Peter, and that by reaſon thereof the ſaid Peter, before the ſaid time when, &c. ſent his ſervants and horſes with that other of the ſaid two waggons in the ſaid declaration mentioned, into the ſaid place in which, &c. for the purpoſe in the ſaid plea in bar in that behalf alledged: ‡ But the ſaid Simon further ſaith, that the ſaid other of the ſaid two waggons being ſo ſent into the ſaid cloſe in which, &c. for the purpoſe and under the pretence aforeſaid, and being under that pretence in the ſaid cloſe in which, &c. the ſaid ſervants of the ſaid Peter, at the ſaid time when, &c. were of the proper wrong and injury of the ſaid Peter, wantonly, wrongfully, and unlawfully driving the ſaid other of the ſaid two waggons in and about the ſaid cloſe in which, &c. in and upon other barley of the ſaid Simon and W. B. then lying and being in the ſaid cloſe in which, &c. being other barley than ſuch as had been ſo divided and ſeparated from the reſt thereof for tithes as aforeſaid, and thereby that waggon was at the ſaid time when, &c. doing damage there to the ſaid Simon and W. B. for which cauſe the ſaid Simon in his own right, and as bailiff to the ſaid W. B. at the ſaid time when, &c. took that other of the ſaid waggons in the ſaid cloſe in which, &c. ſo doing damage there to the ſaid W. B. and Simon, as in the replication is above alledged, as a diſtreſs for that damage ſo there done and doing by that waggon, and detained the ſame as ſuch diſtreſs until, &c. as he the ſaid Simon lawfully might for the cauſe

Replication: the other gon, that it ſent unto pretence, that the ſer drove it tonly an the barley ſet out tithes.

aforeſaid; and this, &c.; wherefore, &c. and a return of that one of the ſaid two waggons, together with his damages, &c. according to the form of the ſtatute, to be adjudged to him: And the ſaid Simon, as to the ſaid plea of the ſaid Peter by him above pleaded in bar, as to the ſaid avowry of him the ſaid Simon by him ſecondly above made, as to the taking of the ſaid firſt of the ſaid two waggons in the ſaid declaration mentioned, ſays, that he, by reaſon of any thing in that plea alledged, ought not to be barred from avowing the ſaid taking of that ſaid firſt of the ſaid two waggons in the ſaid place in which, &c. as juſt; becauſe he ſays, that true it is, &c. &c. [exactly the ſame as the laſt down to this mark ‡, when proceed as follows]: But the ſaid Simon further ſaith, that the ſaid firſt one of the ſaid two waggons ſo being in the ſaid cloſe in which, &c. and before the ſaid time when, &c. was there fully loaded with the ſaid tithe barley, and that the waggon, ſo loaded as aforeſaid, was kept and detained by the ſaid ſervants of the ſaid Peter in the ſaid cloſe in which, &c. for a long and unreaſonable time, to wit, for the ſpace of four hours next after the ſame was ſo loaded as aforeſaid, and before the ſaid time when, &c. and during all that long and unreaſonable time, and until the ſaid time when, &c. was of the proper wrong of the ſaid Peter in the ſaid cloſe in which, &c. taking up room there and incumbering the ſaid cloſe, and doing damage there to the ſaid Simon, for which reaſon the ſaid Samuel, after that one of the ſaid two waggons had been ſo loaden as aforeſaid, and after the end and expiration of a reaſonable time was elapſed next after the loading of the ſaid tithe barley, for the taking and removing that waggon out of the ſaid cloſe in which, &c. to wit, at the ſaid time when, &c. took that ſaid waggon, being one of the ſaid waggons in the ſaid declaration mentioned in which, &c. ſo taking up room there and incumbering the ſaid cloſe, and doing damage there to the ſaid Simon as a diſtreſs for the damage ſo there done and doing by that waggon, and detained the ſame as ſuch diſtreſs until, &c. as he lawfully might for the cauſe aforeſaid; and this he is ready to verify; wherefore, &c. and a return of that one of the ſaid two waggons, together with his damages, &c. according to the form of the ſtatute, to be adjudged to him: And the ſaid Simon, as to the ſaid plea of the ſaid Peter by him above pleaded in bar, as to the ſaid avowry of him the ſaid Simon by him ſecondly above made as to the taking of the ſaid other of the ſaid two waggons in the ſaid declaration mentioned, ſays, that he, by reaſon of, &c. (ſame as the former, down to this mark ‡): But the ſaid Simon further ſaith, that the ſaid other of the ſaid two waggons in the ſaid declaration mentioned being ſo ſent into the ſaid cloſe in which, &c. under the pretence, and for the purpoſe aforeſaid, the ſaid ſervants of the ſaid Peter, at the ſaid time when, &c. were in the ſaid cloſe in which, &c. wrongfully and injuriouſly, and of the proper wrong and injury of the ſaid Peter, wrongfully, wantonly, injuriouſly, and unlawfully driving that ſaid other of the ſaid two waggons in and about the ſaid cloſe in which, &c. in and upon, and over other barley of the ſaid Simon, then lying and being in the

ſaid

ſaid cloſe in which, &c. being other barley than ſuch as had been or was ſo divided and ſeparated from the reſt thereof for tithes as aforeſaid, and that waggon was thereby at the ſaid time when, &c. doing damage there to the ſaid Simon in the ſaid cloſe in which, &c. otherwiſe than as mentioned in that plea in bar in that behalf, for which reaſon the ſaid Simon, at the ſaid time when, &c. took that other of the ſaid two waggons in the ſaid cloſe in which, &c. ſo doing damage there to the ſaid Simon as in this replication is above alledged, as a diſtreſs for that damage ſo there done and doing by that waggon, and detained the ſame as ſuch diſtreſs until, &c. as he the ſaid Simon lawfully might for the cauſe aforeſaid; and this, &c.; wherefore, &c. and a return of that other of the ſaid waggons, together with his damages, &c. according to the form of, &c. to be adjudged to him, &c.

Rejoinder to laſt replication *de injuria propria* as to other replications, and iſſue thereon.

And the ſaid Peter, as to the ſaid plea of the ſaid Simon by him above pleaded, in reply to the ſaid plea of the ſaid Peter by him above pleaded in bar to the ſaid avowry and cognizance of the ſaid Simon by him firſt above made, as to the ſaid taking of one of the ſaid two waggons in the ſaid declaration mentioned, ſays, that the ſaid Simon, by reaſon of any thing in his ſaid plea ſo pleaded in reply, ought not in his own right to avow, nor as bailiff of the ſaid W. B. to acknowledge the taking the ſaid one of the ſaid two waggons in the ſaid cloſe in which, &c. to be juſt; becauſe he the ſaid Peter ſays, that the ſaid Simon, at the ſaid time when, &c. in the ſaid cloſe in which, &c. of his own wrong, and without any ſuch cauſe as is by him in the ſaid plea ſo firſt above pleaded in reply alledged, took and unjuſtly detained the ſaid one of the ſaid two waggons in manner and form as the ſaid Peter in his ſaid declaration above thereof complains againſt him the ſaid Simon; and this the ſaid Peter prays may be enquired of by the country, and the ſaid Simon doth the like; and the ſaid Peter, as to the ſaid plea of the ſaid Simon, &c. [*De injuria* to the other three replications.]

Avowry for damage feaſant, his freehold.

LIDDIARD *and* CRESWICK. } AND the ſaid Francis, by Andrew Innys his attorney, comes and defends the force and injury, when, &c. and well avows the taking of the cattle aforeſaid in the ſaid place in which, &c. unjuſtly, &c.; becauſe he ſays, that the ſame place in which, &c. is known, and at the ſaid time when, &c. and long before, was known as well by the name of Hannam's Common as by the name of Hannam's Heath, and contains at the ſame time when, &c. in itſelf fifty acres of paſture, with the appurtenances, in the ſaid pariſh of Bitton, in the ſaid county of Glouceſter; which ſaid fifty acres of paſture, with the appurtenances, are, and at the ſame time when, &c. were the ſoil and freehold of him the ſaid Francis; and becauſe the cattle aforeſaid, at the ſaid time when, &c. were in the

ſaid

ſaid place in which, &c. eating up the graſs there then growing, and doing damage there, the ſame Francis, in his own proper right, well avows the taking of the cattle aforeſaid in the ſaid place in which, &c. and juſtly, &c. ſo doing damage there; and this he is ready to verify; wherefore he prays judgment and a return of the cattle aforeſaid, together with his damages, coſts, and charges in this behalf ſuſtained, according to the form of the ſtatute in ſuch caſe lately made and provided, to be adjudged to him, &c.

that T. M. ſeiſed infee, demiſed to L. and the intiff for their

And the ſaid John Liddiard ſays, that the ſaid Francis, for the reaſon before alledged, the taking of the cattle aforeſaid in the ſaid place in which, &c. ought not to avow juſt; becauſe by proteſting that the ſame place in which, &c. at the ſaid time when, &c. was not the freehold of him the ſaid Francis as is above ſuppoſed; for plea the ſame John ſays, that long before the ſaid time of the taking of the cattle aforeſaid in the ſaid place in which, &c. to wit, on the twenty-firſt day of Auguſt, in the tenth year of the reign of the lord James, late king of England, &c. Theodore Newton, knight, was ſeiſed in his demeſne as of fee of and in one meſſuage and forty-ſeven acres and a half of land, arable, meadow, and paſture, with the appurtenances, in Hannam and Bitton, in the pariſh of Bitton aforeſaid, in the county aforeſaid; and being ſo thereof ſeiſed afterwards, to wit, on the ſaid twenty-firſt day of Auguſt, in the tenth year of the reign of the lord James, late king of England aboveſaid, at Bitton aforeſaid, in the county aforeſaid, demiſed the meſſuage aforeſaid, and the ſaid forty-ſeven acres and a half of land, arable, meadow, and paſture, with the appurtenances, to William Liddiard and Katharine his wife, and him the ſaid John Liddiard, to hold to the ſaid William Liddiard and Katharine his wife for and during the term of their natural lives, and the natural life of the longer liver of them, and after their deceaſe, the remainder thereof to the ſaid John Liddiard for and during the term of the natural life of him the ſaid John; by virtue of which ſaid demiſe the ſame William and Katharine afterwards, to the ſaid meſſuage and the ſaid forty-ſeven acres and a half of land, arable, meadow, and paſture, with the appurtenances, were ſeiſed in their demeſne, as of freehold, for the term of their lives and the life of the longer liver of them, the remainder thereof after their deceaſe to the ſaid John for the term of his life ſo as aforeſaid belonging; and the ſaid William and Katharine being ſo thereof ſeiſed, afterwards, to wit, on the firſt day of September, in the thirty-ſecond year of the reign of the lord Charles the Second, now king of England, &c. at Bitton aforeſaid, in the county aforeſaid, died thereof ſeiſed; after the death of which, the ſaid William and Katharine, he the ſaid John, as in his remainder aforeſaid, afterwards, to wit, on the ſaid firſt day of September, in the thirty-ſecond year of the reign of the lord Charles the Second, now king of England, &c. at Bitton aforeſaid, in the county aforeſaid, into the meſſuage aforeſaid, and the ſaid forty-ſeven acres and a half of land, arable, meadow, and paſture,

paſture, with the appurtenances, by virtue of the demiſe aforeſaid entered, and was and is yet thereof ſeiſed in his demeſne as of freehold for the term of his life: And the ſame John further ſays, that at the time of the demiſe aforeſaid made, he the ſaid Theodore Newton, and all thoſe whoſe eſtate the ſame Theodore then had of and in the ſaid meſſuage and forty-ſeven acres and a half of land, arable, meadow, and paſture, with the appurtenances, have had, and for time out of mind have been accuſtomed to have for themſelves, their farmers, and tenants of the ſaid meſſuage, and the ſaid forty-ſeven acres and a half of land, arable, meadow, and paſture, with the appurtenances, common of paſture in the ſaid place in which, &c. for all their commonable cattle in and upon their tenements aforeſaid, with the appurtenances, levant and couchant every year at all times of the year, as to their tenements aforeſaid belonging and appertaining; by reaſon whereof the ſaid John, before the ſaid time when, &c. to wit, on the ninth day of September, in the thirty-third year of the reign of the ſaid lord the now king, the cattle aforeſaid in the declaration aforeſaid above ſpecified, being then the proper cattle of him the ſaid John, upon the ſaid forty ſeven acres and a half of land, arable, meadow, and paſture, with the appurtenances, then levant and couchant, into the ſaid common called Hannam's Common, being the place in which, &c. put as he well might to uſe his common aforeſaid, and the ſaid Francis the ſaid cattle, to wit, the ſaid thirty ſheep in the ſaid place in which, &c. put feeding on the graſs there growing, and uſing the common of paſture of him the ſaid John there afterwards, at the ſaid time when, &c. to wit, on the tenth day of September, in the thirty-third year aboveſaid, at Bitton aforeſaid, in the ſaid place in which, &c. commonly called Hannam's Common, took, and then unjuſtly detained, againſt ſureties and pledges, in manner and form as the ſaid John above againſt him complains; and this the ſame John is ready to verify; wherefore he prays judgment and his damages by reaſon of the taking and unjuſt detention of the cattle aforeſaid to be adjudged to him, &c.

Preſcription common.

And the ſaid Francis Creſwick (as before) ſays, that the ſaid fifty acres of paſture called Hannam's Common, otherwiſe Hannam's Heath, are, and at the ſame time when, &c. were the ſoil and freehold of him the ſaid Francis; and becauſe the cattle aforeſaid, at the ſaid time when, &c. were in the ſame place in which, &c. eating up the graſs then there growing, and doing damage there, the ſaid Francis the ſame cattle took as he hath above alledged; without that, that the ſaid Theodore, and all thoſe whoſe eſtate the ſame Theodore then had of and in the ſaid meſſuage and forty-ſeven acres and a half of land, arable, meadow, and paſture, with the appurtenances, have had, and from time out of mind have been accuſtomed to have for themſelves, their farmers, and tenants of the ſaid meſſuage and the ſaid forty-ſeven acres and a half of land, arable, meadow, and paſture, with the appurte-

Replication that it is freehold.

Traverſe of preſcription.

nances, common of paſture in the ſaid place in which, &c. for all their commonable cattle in and upon their tenements aforeſaid, with the appurtenances, levant and couchant every year at all times of the year, as to their tenements aforeſaid belonging and appertaining, as the ſaid John in bar to the avowry aforeſaid hath above alledged; and this he is ready to verify; wherefore he prays judgment and a return of the cattle aforeſaid, together with his damages, &c. to be adjudged to him, &c.: And the ſaid John Liddiard (as before) ſays, that the ſaid Theodore Newton, and all thoſe whoſe eſtate the ſaid Theodore then had in the ſaid meſſuage and forty-ſeven acres and a half of land, arable, meadow, and paſture, with the appurtenances, have had, and from time out of mind have been accuſtomed to have for themſelves, their farmers, and tenants of the ſaid meſſuage and the ſaid forty-ſeven acres and a half of land, arable, meadow, and paſture, with the appurtenances, common of paſture in the ſaid place in which, &c. for all their commonable cattle in and upon their tenements aforeſaid, with the appurtenances, levant and couchant every year at all times of the year, as to their tenements aforeſaid belonging and appertaining in manner and form as he the ſaid John Liddiard have above alledged; and this he prays may be enquired of by the country, and the ſaid Francis likewiſe; therefore the ſheriff is commanded that he cauſe to come before the lord the king in the octave of St. Hilary, whereſoever, &c. twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c. the ſame day is given to the parties aforeſaid, &c.

e on the verſe.

Avowry to a declaration in replevin by freeman for damage feasant.

BROWNE } AND the ſaid Robert, by, &c. his attorney, comes and defends the force and injury, when, &c. and well avows the taking of the ſaid cattle in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that the ſaid R. long before the ſaid time when the ſaid cattle is above ſuppoſed to have been taken, and at the ſaid time when, &c. was and yet is ſeiſed in his demeſne as of fee of and in the ſaid place called Tovey Reddings, in which, &c. and being ſo thereof ſeiſed, becauſe that the ſaid cattle, at the ſaid time when, &c. were in the ſaid place in which, &c. feeding on the graſs of the ſaid Robert there then growing, and doing damage there to the ſaid R. he the ſaid R. well avows the taking of the ſaid cattle in the ſaid place in which, &c. at the ſaid time when, &c. then and there ſo feeding on the graſs of the ſaid B. there then growing, and ſo doing damage there to the ſaid R. B. and juſtly, &c.; and this he is ready to verify; wherefore he prays judgment and a return of the cattle, together with his damages, &c. according to the form of the ſtatute, &c.: And the ſaid R. further, by leave of the court here for that purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, as to the taking of one heifer, part of the ſaid cattle in the ſaid declaration mentioned, ſays, that that heifer, at the ſaid time when the

at the ſuit of CLIFFORD.

the ſame was ſo taken, was the property of one Samuel Clifford; without this, that that heifer, at the ſaid time when, &c. was the property of the ſaid Nathaniel; and this he is ready to verify; wherefore he prays judgment if the ſaid Nathaniel ought to have his ſaid action thereof againſt him; and he alſo prays judgment and a return of the ſaid one heifer, together with his damages, coſts, and charges in this behalf ſuſtained, according to the form of the ſtatute in ſuch caſe made and provided, to be adjudged to him, &c.

Plea of property in a third perſon.

W. HAYWARD.

And the ſaid Nathaniel, as to the ſaid plea of the ſaid Robert firſt above pleaded, ſaith, that the ſaid R. by reaſon of any thing in his ſaid plea firſt pleaded above alledged, ought not to avow the taking of the ſaid cattle in the ſaid place in which, &c. to be juſt; becauſe he ſaith, that he the ſaid Nathaniel, long before, and at the ſaid time when, &c. was and yet is lawfully poſſeſſed of and in a certain cloſe of land, with the appurtenances, called the Great Hedge, in the pariſh of B. aforeſaid, lying contiguous and next adjoining to the ſaid place in which, &c.; and that the ſaid R. and all other the farmers, tenants, and occupiers of the ſaid place in which, &c. for the time being reſpectively, from time whereof the memory of man is not to the contrary, until the defect thereof hereinafter mentioned, have maintained and repaired, and have uſed and been accuſtomed to maintain and repair, and the ſaid R. ſtill of right ought to maintain and repair the fence between the ſaid place in which, &c. and the ſaid cloſe of the ſaid N. called the Great Hedge, when and as often as occaſion hath required, to prevent cattle feeding and depaſturing in the great cloſe called the Great Tyning from eſcaping into the ſaid cloſe in which, &c. for want of a ſufficient fence; and the ſaid N. being ſo poſſeſſed of and in the ſaid cloſe called Great Tyning, with the appurtenances, he the ſaid N. before the ſaid time when, &c. put his ſaid cattle into the ſaid cloſe called Great Tyning to depaſture the graſs there then growing, as it was lawful for him to do: And the ſaid N. further ſays, that the fence between the ſaid cloſe called Great Tyning, and the ſaid place in which, &c. at the ſaid time when, &c. was ruinous and in great decay for want of neceſſary repairing and amending thereof; by reaſon whereof the ſaid cattle of the ſaid N. depaſturing the graſs in the ſaid cloſe called Great Tyning, then growing for want of a ſufficient fence between the ſaid place in which, &c. and the ſaid cloſe called Great Tyning, at the ſaid time when, &c. againſt the will of the ſaid N. eſcaped from the ſaid cloſe called Great Tyning into the ſaid place in which, &c. and depaſtured the graſs there then growing until the ſaid R. afterwards and before the ſaid N. had notice of the ſaid cattle being ſo eſcaped as aforeſaid, to wit, on the ſaid twenty-ſixth day of May, in the year aforeſaid, of his own wrong took the ſaid cattle in the ſaid place in which, &c. and unjuſtly detained them againſt ſureties and pledges until, &c. in manner and form as the ſaid N. hath above in his ſaid declaration in that be-

Plea to the above avowry.

behalf alledged; and this he is ready to verify; wherefore ſince that the ſaid R. hath above acknowledged the taking of the ſaid cattle, the ſaid N. prays judgment and his damages by reaſon of the taking and unjuſtly detaining of the ſame cattle to be adjudged to him, &c.: And the ſaid N. as to the ſaid plea of the ſaid R. by him laſtly above pleaded, as to the taking of one heifer, part of the ſaid cattle in the ſaid declaration mentioned, ſays, that the ſaid R. by reaſon of any thing by the ſaid R. in his ſaid plea in that behalf above alledged, ought not to juſtify or avow the taking of the ſaid one heifer, part of the ſaid cattle in the ſaid declaration mentioned, to be juſt; becauſe he ſaith, that the ſaid four heifers in the ſaid declaration mentioned, and each and every of them at the ſaid time when, &c. was the property of the ſaid N. as by the ſaid writ and declaration aforeſaid is above ſuppoſed; and this he prays may be enquired of by the country; and the ſaid R. doth the like, &c.

D. POOLE.

Replication to above plea.

And the ſaid R. as to the ſaid plea of the ſaid N. by him above pleaded in bar to the ſaid avowry, ſays, that he, by any thing therein contained, ought not to be barred from avowing the ſaid taking of the ſaid cattle in the ſaid place in which, &c. as juſt, or from having a return of the ſaid cattle; becauſe he ſays, that true it is that the ſaid R. and all other farmers, tenants, and occupiers of the ſaid cloſe in which, &c. for the time being reſpectively from time whereof the memory of man is not to the contrary, have maintained and repaired, and have been uſed and accuſtomed to maintain and repair, and that the ſaid R. ſtill ought to maintain and repair the fence between the ſaid place in which, &c. and the ſaid cloſe called Great Tyning when and as often as occaſion hath required, to prevent cattle depaſturing in the ſaid cloſe called Great Tyning from eſcaping into the ſaid cloſe called Great Hedge, in which, &c. for want of a ſufficient fence between thoſe cloſes as the ſaid N. hath above in pleading alledged; yet for replication in this behalf the ſaid R. ſays, that the ſaid fence between the ſaid place in which, &c. and the ſaid cloſe called Great Tyning before the ſaid time when, &c. to wit, on the ſame day and year in the ſaid declaration mentioned, was in good, neceſſary, and tenantable repair, and ſufficient to prevent cattle depaſturing in the ſaid cloſe called Great Tyning from eſcaping thereout into the ſaid place in which, &c.; and that the ſaid fence ſo being in good, neceſſary, and tenantable repair, and ſufficient for the purpoſe aforeſaid, he the ſaid N. afterwards, and before the ſaid time when, &c. to wit, on the ſame day and year in the ſaid declaration at the pariſh aforeſaid, of his own wrong, with force and arms pulled down and proſtrated a great part of the ſaid fence, and made gaps and breaches therein, and that the ſaid cattle, before the ſaid time when, &c. to wit, on the ſame day and year aforeſaid, of wrong and injury of the ſaid N. eſcaped out of the ſaid cloſe called Great Tyning, through thoſe gaps and breaches ſo made or cauſed to be made in the ſaid fences by the ſaid N. or

through

through ſome or one of them into the ſaid place in which, &c. and on that occaſion were in the ſaid place in which, &c. depaſturing the graſs there growing, and doing damage there to the ſaid R. from thence until the ſaid R. at the ſaid time when, &c. took the ſaid cattle in the ſaid place in which, &c. ſo depaſturing on the graſs there then growing, and ſo doing damage there to the ſaid R. as the ſaid R. hath above in his ſaid avowry alledged; and this he is ready to verify; wherefore as before he prays judgment and a return of the ſaid cattle, together with his damages, &c. according to the form of the ſtatute, &c. to be adjudged to him, &c. W. HAYWARD.

Rejoinder above replication.

And the ſaid N. as before ſays, that the ſaid fence between the ſaid place in which, &c. and the ſaid cloſe called Great Tyning at the ſaid time when, &c. was ruinous and in great decay for want of neceſſary repairing and amending thereof, by reaſon whereof the ſaid cattle of the ſaid N. depaſturing the graſs in the ſaid cloſe called Great Tyning into the ſaid place in which, &c. and depaſtured the graſs there then growing in manner and form as the ſaid N. hath above alledged; without this, that the ſaid N. before the ſaid time when, &c. pulled down and proſtrated any part of the ſaid fence, or made gaps and breaches therein in manner and form as the ſaid R. in his ſaid replication in this behalf hath above alledged; and this he is ready to verify; wherefore ſince the ſaid Robert hath above acknowledged the taking of the ſaid cattle, the ſaid N. as before prays judgment and his damages, by reaſon of the taking and unjuſtly detaining the ſaid cattle, to be adjudged to him, &c. D. POLE.

Surrejoinder the above joinder.

And the ſaid R. as before ſays, that the ſaid N. before the ſaid time when, &c. to wit, on the ſame day and year aforeſaid, at the pariſh aforeſaid, pulled down and proſtrated great part of the ſaid fence, and made gaps and breaches therein in manner and form as the ſaid R. in his ſaid replication in that behalf hath above alledged; and of this he puts himſelf upon the country, and the ſaid N. doth the like, &c.; therefore as well to try this iſſue as the ſaid other iſſue above joined between the ſaid parties, the ſaid ſheriff is commanded that he cauſe to come here on the octave of the Purification of the Bleſſed Virgin Mary twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c.

AVOWRIES, COGNIZANCES, &c. UNDER DEMISES. DAMAGE FEASANT.

MEAD AND ANOTHER *at the ſuit of* MAIDWELL, ESQUIRE. } AND the ſaid John and Aaron, by Thomas Roberts their attorney, come and defend the force and injury, when, &c. and pray judgment of the declaration aforeſaid; becauſe they ſay, they took the ſheep aforeſaid at Gaddington aforeſaid, in a

Plea in abatement, that the taking was in another place.

certain place called Brook Furlong, in a certain parcel thereof, containing by eſtimation three acres of land; which ſaid place called Brook Furlong whereof, &c. is, and for time immemorial was parcel of a certain great field called Mill Field, in Gaddington aforeſaid, containing by eſtimation one hundred acres, without that, they took the ſheep aforeſaid in the ſaid place called Kettering Blake, as the ſaid Thomas by his declaration aforeſaid above ſuppoſes, and this they are ready to verify; wherefore they pray judgment of that declaration, &c. and to have a return of the ſheep aforeſaid, the ſame John and Aaron, as bailiffs of one John Hemes, well acknowledge the taking of the ſheep aforeſaid in the ſaid three acres of land in the ſaid place called Brook Furlong, and juſtly, &c. becauſe they ſay, that long before the ſaid time when, &c. to wit, on the laſt day of March, in the year of Our Lord 1703, and always from thence afterwards hitherto, one Cæſar Child, bart. was and yet is ſeiſed of and in the ſaid three acres of land, in which they took the ſheep aforeſaid in his demeſne as of fee, and being ſo thereof ſeiſed, he the ſaid Cæſar Child, before the ſaid time when, &c. to wit, the ſame day and year aforeſaid, at G. aforeſaid, demiſed to the ſaid John Hemes (among others) the ſaid three acres of land, with the appurtenances, to have and to hold to the ſaid John Hemes from the feaſt day of the Annunciation of the Bleſſed Virgin Mary then laſt paſt unto the full end and term of three years then next enſuing, and fully to be complete and ended, and from thence from year to year as long as both parties ſhould pleaſe, at and under a certain yearly rent between them agreed to be paid, by virtue of which ſaid demiſe the ſaid John Hemes afterwards, and before the ſaid time when, &c. into the ſaid three acres of land in which, &c. above demiſed were entered, and always from thence afterwards hitherto was, and yet is thereof poſſeſſed at the will of the ſaid Cæſar Child and John Hemes, and becauſe the ſheep aforeſaid at the ſaid time when, &c. were in the ſaid three acres of land, parcel of the ſaid place called Brook Furlong, eating up the graſs there growing, and doing damage there, the ſaid John Maidwell and Aaron, as bailiffs of the ſaid John Hemes, well acknowledge the taking of the ſheep aforeſaid in the ſaid three acres of land in the ſaid place called Brook Furlong, and juſtly, &c. for the ſaid damage there, &c.

And the ſaid Thomas Maidwell ſays, that his declaration aforeſaid for the reaſon before alledged, ought not to be quaſhed, becauſe he ſays, that the ſaid John and Aaron took the ſheep aforeſaid in the ſaid place called Ketterin Blake, as he hath above declared, and this he prays may be enquired of by the country, and the ſaid John and Aaron likewiſe, &c., therefore the ſheriff is commanded that he cauſe to come here from the day of the Holy Trinity in three weeks twelve, &c. by whom, &c. and who neither &c. to recognize, &c. becauſe as well, &c. the ſame day is given to the parties, &c.

AND the ſaid defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and well avows the taking of the ſaid cattle in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that *the ſaid place in which, &c. contains, and at the ſaid time when, &c. contained thirty acres of land, with the appurtenances; which ſaid thirty acres of land in which, &c. are, and at the ſaid time when, &c. and alſo* from time immemorial were parcel of the manor of L. being in the county and cuſtomary land of the ſame manor, and demiſed and demiſeable by copy of court roll of that manor, by the lord or lords, lady or ladies of the ſame manor, to any perſon or perſons willing to take the ſame in fee ſimple or otherwiſe, at the will of the lord or lords, lady or ladies of the ſaid manor, according to the cuſtom of the ſame manor: And the ſaid defendant further ſays, that the honourable M. L. before the ſaid time when, &c. to wit, on, &c. was lawfully lady of the ſaid manor, and the ſaid M. L. ſo being lady of the ſaid manor, ſhe the ſaid M. L. afterwards, and before the ſaid time when, &c. to wit, on, &c. at, &c. by copy of the court roll of the ſaid manor, granted the ſaid thirty acres of land, with the appurtenances, in which, &c. (amongſt other things) to one C. W. to hold to him the ſaid C. W. his heirs and aſſigns for ever, at the will of the lord or lady, according to the cuſtom of the ſaid manor; and the ſaid C. W. according to the cuſtom of the ſaid manor, was then and there admitted tenant thereof; and the ſaid C. W. by virtue of the grant and admiſſion aforeſaid, before the ſaid time when, &c. to wit, on, &c. entered into the ſaid thirty acres of land, with the appurtenances (amongſt other things) and was ſeiſed thereof in his demeſne as of fee at the will of the lord or lady, according to the cuſtom of the ſaid manor; and the ſaid C. W. being ſo ſeiſed as aforeſaid, he the ſaid C. W. afterwards, and before the ſaid time when, &c. to wit, on, &c. at, &c. demiſed the ſaid thirty acres in which, &c. with the appurtenances (amongſt other things) unto the ſaid defendant, to have and to hold the ſame to him the ſaid defendant from the day and year aforeſaid, for and during, and unto the full end and term of three years from thence next enſuing, and fully to be complete and ended; by virtue of which ſaid demiſe he the ſaid defendant afterwards, and before the ſaid time when, &c. to wit, on, &c. entered into the ſaid thirty acres in which, &c. with the appurtenances, and became and was, and continually from thenceforth hitherto hath been, and ſtill is poſſeſſed thereof; and becauſe the ſaid mare in the ſaid declaration mentioned, at the ſaid time when, &c. was in the ſaid thirty acres in which, &c. treading down and eating up the beans and graſs of the ſaid defendant there then growing, and there doing damage to the ſaid defendant, he the ſaid defendant well avows the taking of the ſaid mare in the ſaid place in which, &c. ſo doing damage there, and juſtly, &c. as and for a diſtreſs for that damage, &c.; and this, &c.; wherefore, &c. and a return of the ſaid mare, together with his coſts and charges to be

Avowry, the *locus in quo* part of the manor of L. that defendant is tenant for years, that he took the mare as a diſtreſs, damage feaſant therein,

adjudged to him, according to the form of the ſtatute in ſuch caſe made and provided.

V. GIBBS.

Replication, *de injuria &c*

And the ſaid plaintiff ſaith, that the ſaid defendant, by any thing in the above avowry alledged, ought not to avow the taking of the ſaid mare in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſaith that the ſaid defendant at the ſaid time when, &c. of his own wrong took the ſaid mare in the ſaid declaration mentioned, and unjuſtly detained the ſame againſt gages and pledges until, &c. in manner and form as the ſaid plaintiff hath above thereof complained againſt him, &c. without this, that the ſaid place in which, &c. is parcel of the ſaid thirty acres in the ſaid avowry mentioned, as the ſaid Richard hath above alledged, &c.; and this, &c., wherefore ſince the ſaid defendant hath above acknowledged the taking of the ſaid mare in which, &c. the ſaid plaintiff prays judgment and his damages by reaſon of the taking and unjuſtly detaining the ſaid mare to be adjudged to him, &c.

JOHN LANE.

Traverſe.

Avowry and cognizance by two perſons, one in his own right, and the other as his bailiff and bailiff of a third perſon, who, together with the former, were tenants from year to year at will of both parties, to a tenant for life, that they took the geld ing damage feaſant

AND the ſaid Thomas Hodſon and Sarah his wife, by A. B. their attorney, come and defend the wrong and injury, when, &c. and the ſaid T. H. in his own right well avows, and the ſaid Sarah, as bailiff of the ſaid T. H. and one T. W. well acknowledges the taking of the ſaid gelding in the ſaid place in which, &c. and juſtly, &c., becauſe they ſay, that one ſir J. G. long before, and at the ſaid time when, &c. was, and ſtill is, ſeiſed in his demeſne as of freehold, for the term of his natural life, of and in twenty-ſeven undivided parts or ſhares (the whole into one hundred and ſeven parts or ſhares to be divided) of the ſaid place in which, &c., and being ſo ſeiſed thereof he the ſaid ſir J. G. afterwards, and before the ſaid time when, &c. to wit, on, &c. at, &c. demiſed the ſaid twenty-ſeven undivided parts or ſhares of the ſaid place in which, &c. unto the ſaid T. W. and T. H. to hold the ſame from for the ſpace of one year, and ſo from year to year, for ſo long as it ſhould pleaſe the ſaid ſir J. G. the ſaid T. H. and T. W., by virtue whereof the ſaid T. H. and T. W. afterwards, to wit, on, &c. entered into the ſaid demiſed premiſes, and were, and from thenceforth hitherto have been, and ſtill are, lawfully poſſeſſed thereof, and being ſo poſſeſſed thereof, becauſe the ſaid gelding, at the ſaid time when, &c. was in the ſaid place in which, &c. depaſturing the graſs there then growing, and doing damage there, the ſaid T. H. in his own right well avows, and the ſaid Sarah, as the bailiff of the ſaid T. H. and T. W. and by their command well acknowledges the taking of the ſaid gelding in the ſaid place in which, &c., ſo doing damage there, &c.: And for a further

That A B ſeiſed in fee of meſſuage and lands, and entitled to a very particular right of common for particular cattle, from ſ to ſuch a time in a year, and demiſed ſame to avowant and his co tenant, and becauſe the cattle were treſpaſſing at the ſaid time when, &c being a time within, &c. they juſtly taking them damage feaſant.

avowry

avowry and cognizance in this behalf, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſe made and provided, the ſaid T. H. in his own right well avows, and the ſaid Sarah, as bailiff of the ſaid T. H. and T. W. well acknowledges the taking of the ſaid gelding in the ſaid place in which, &c.; becauſe they ſay, that the ſaid ſir J. G. long before, and at the ſaid time when, &c. was, and ſtill is, ſeiſed of and in a certain meſſuage, and divers, to wit, one hundred and forty acres of land, with the appurtenances, called Fox Farm, ſituate and being in the townſhip aforeſaid, in his demeſne as of fee; and that he the ſaid ſir J. G. and all thoſe whoſe eſtate he now hath, and at the ſaid time when, &c. had, of and in the ſaid meſſuage and land, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, and have been uſed, and been accuſtomed to have and uſe, and during all the time aforeſaid, of right ought to have had and uſed, and ſtill of right ought to have and uſe, for himſelf and themſelves, his and their farmers and tenants, occupiers of the ſaid meſſuage and land, with the appurtenances, common of paſture in the ſaid place in which, &c. in manner, that is to ſay, for twenty oxen and cows, or in lieu of each ſuch ox or cows for two calves and one foal, or in lieu of every two, or any two of the ſaid twenty oxen or cows for one mare or one gelding, at his or their election yearly and every year, from the feaſt of according to the old ſtile and computation of time uſed within this kingdom, until the feaſt of according to the ſame ſtile and computation of time, as to the ſaid meſſuage *and land*, with the appurtenances, belonging and appertaining; and the ſaid ſir J. G. being ſo ſeiſed thereof, afterward, and before the ſaid time when, &c. to wit, on, &c. A. D. 1784, at the townſhip aforeſaid, demiſed the ſaid meſſuage *and land*, with the appurtenances, unto the ſaid T. H. and T. W. to hold the ſame in manner following, that is to ſay, *the ſaid land, with the appurtenances, from the thirteenth day of February then next, and the ſaid meſſuage, with the appurtenances*, from the twelfth day of May then next for the ſpace of one year from thence reſpectively next following, and ſo from year to year for ſo long time as it ſhould pleaſe the ſaid ſir J. G. and the ſaid T. H. and T. W.; by virtue whereof the ſaid T. H. and T. W. afterwards, to wit, on, &c. entered into the ſaid meſſuage *and land*, with the appurtenances, and became, and were, and from thenceforth hitherto have been, and ſtill are, lawfully poſſeſſed thereof; and being ſo poſſeſſed thereof, becauſe the ſaid gelding, at the ſaid time when, &c. (being between the feaſt of and the feaſt of , was in the ſaid place in which, &c. depaſturing the graſs there then growing, and doing damage there, ſo that the ſaid T. H. and T. W. could not at the ſaid time when, &c. have or enjoy their ſaid common of paſture in the ſaid place in which, &c. in ſo large and beneficial a manner as they then and there of right ought to have done, he the ſaid T. H. in his own right well avows, and

the ſaid Sarah, as the bailiff of the ſaid T. H. and T. W. well acknowledges the taking of the ſaid gelding in the ſaid place in which, &c. doing damage there, &c.: And for a further avowry and cognizance in this behalf, by like leave of, &c. according to, &c. the ſaid T. H. in his own right well avows, and the ſaid Sarah, as, &c. well acknowledges the taking of the ſaid gelding in the ſaid place in which, &c. and juſtly, &c.; becauſe they ſay, that the ſaid ſir J. G. long before, and alſo at the ſaid time when, &c. was, and ſtill is, ſeiſed of and in a certain other meſſuage, with the appurtenances, ſituate and being in the townſhip aforeſaid, in his demeſne as of fee, and that he the ſaid ſir J. G. and all thoſe whoſe, &c. had of and in the ſaid laſt-mentioned meſſuage, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and uſed, and been uſed, and accuſtomed to have and uſe, during all the time aforeſaid, and of right ought, &c. &c. [ſame as the ſecond, only omitting what is in Italic]. [4th Avowry like the ſecond, claiming the common only for twenty oxen or cows. 5th Like the fourth, but claiming the common only for twenty cows or oxen in right of the meſſuage only.]

Avowry and cognizance, as laſt, preſcribes in the right of a meſſuage inſtead of a meſſuage and

W. LAMBE.

SOMERSETSHIRE, to wit. William Cullen was ſummoned to anſwer George Norman of a plea, wherefore he took the cattle of the ſaid George, and them unjuſtly detained againſt gages and pledges, until, &c. and whereupon the ſaid George, by A. B. his attorney, complains; for that the ſaid William, on, &c. at, &c. in, &c. in a certain place there called the Higher Monkey Leaſe, took the cattle following, to wit, one gelding and one mare of the ſaid George, and them unjuſtly detained againſt ſureties and pledges, until, &c. wherefore the ſaid George ſaith that he is injured, and has damage to the value of twenty pounds; and therefore he brings ſuit, &c.

Declaration (in Replevin), for taking a gelding and a mare, in A.

N. GROSE.

And the ſaid William, by C. D. his attorney, comes and defends the wrong and injury, when, &c. and well avows the taking of the ſaid cattle in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that he the ſaid William, before, and at the time when, &c. and long afterwards, was lawfully poſſeſſed of and in the ſaid place, called Higher Monkey Leaſe, in the pariſh of A. aforeſaid; and becauſe the ſaid cattle, at the ſaid time when, &c. were wrongfully in the ſaid place in which, &c. feeding on the graſs there then growing, and doing damage there to the ſaid William, he the ſaid William well avows the taking of the ſaid cattle in the ſaid place in which, &c. as and for a diſtreſs for the damage ſo there done and doing by the ſaid cattle; and this, &c.; where-

Avowry, damage feaſant, adding defendant to be poſſeſſed generally.

wherefore, &c. and a return of the ſaid cattle, together with his damages, coſts, and charges, according to the form of the ſtatute in that caſe made and provided, to be adjudged to him, &c.

J. MORGAN.

DAVIES *againſt* ANDREWS. } SHROPSHIRE, to wit. William Andrews was ſummoned to anſwer Edward Davies, &c. for taking one bay mare at the townſhip of Longdon, within the pariſh of Penteſbury, in the ſaid county, in a certain place there called Pound Yard or Dorſet's Yard.

And the ſaid William, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and well avows the taking of the ſaid mare in the ſaid declaration mentioned, in the ſaid place in which, &c. juſtly, &c.; becauſe he ſays, that the right honourable Charles earl of Tankerville, long before, and at the ſaid time when, &c. was ſeiſed of and in the ſaid place in which, &c. with the appurtenances, in his demeſne as of fee; and being ſo ſeiſed, he the ſaid earl, long before the ſaid time when, &c. to wit, on the ſecond of February 1784, demiſed the ſaid place in which, &c. with the appurtenances, to one Richard Price, now deceaſed, to have and to hold the ſaid place in which, &c. with the appurtenances, to the ſaid Richard Price for one whole year from thence next enſuing and fully to be complete and ended, and ſo from year to year for ſo long a time as it ſhould pleaſe the ſaid earl and the ſaid Richard Price; by virtue of which demiſe he the ſaid R. P. afterwards, and long before the ſaid time when, &c. to wit, on the ſame day and year aforeſaid, entered into the ſaid place in which, &c. with the appurtenances, and became and was poſſeſſed thereof for the ſaid time; and being ſo poſſeſſed thereof, he the ſaid R. P. afterwards, and long before the ſaid time when, &c. to wit, on the ſame day and year laſt aforeſaid, demiſed the ſaid place in which, &c. with the appurtenances, to the ſaid William, to have and to hold the ſaid place in which, &c. with the appurtenances, unto the ſaid William for one whole year from thence next enſuing; by virtue whereof he the ſaid William afterwards, and long before the ſaid time when, &c. to wit, on the ſame day and year laſt aforeſaid, entered into the ſaid place in which, &c. with the appurtenances, and became, and until and at the ſaid time when, &c. was poſſeſſed thereof; and becauſe the ſaid mare in the ſaid declaration mentioned, at the ſaid time when, &c. was wrongfully and injuriouſly in the ſaid place in which, &c. was eating and depaſturing the graſs there then growing, and doing damage there, he the ſaid William well avows the taking of the ſaid mare in the ſaid place in which, &c. and juſtly, &c. for and in the name of a diſtreſs for the ſaid damage ſo by the ſaid mare then and there done and doing to the ſaid William; and this, &c.; wherefore he prays judgment and a return of the ſaid mare, together

Avowry, lord T. ſeiſ... *locus* and d... ed ſame to... as tenant... year of... that R. P... miſed to de... ant for one... and becau... mare was... mage ... well avows...

gether with his damages, coſts, and charges in this behalf, according to the form of the ſtatute in ſuch caſe made and provided, to be adjudged to him, &c.

FOSTER BOWER.

har ad- lord T.'s and the to R. P. demiſe, defendant, proteſting defendant the time &c. was poſſeſſed, ays that ant de- to plain- hold, &c. entered, the time &c. was ſed, there- and put in ttle, until ing de in- &c.

And the ſaid Edward, as to the ſaid avowry of the ſaid William by him above made, ſays, that he by reaſon of any thing in the ſaid avowry contained ought not to avow the taking of the ſaid mare of the ſaid Edward in the ſaid declaration mentioned, in the ſaid place in which, &c. to be juſt, &c.; becauſe he ſays, that true it is, that the ſaid right honourable Charles earl of T. was ſeiſed of and in the ſaid place in which, &c. with the appurtenances, in his demeſne as of fee, as the ſaid W. has in his ſaid avowry alledged, and that being ſo ſeiſed he the ſaid earl demiſed the ſaid place in which, &c. with the appurtenances, to the ſaid R. Price, as in the ſaid avowry is alſo alledged; and that he the ſaid R. P. afterwards demiſed the ſaid place in which, &c. with the appurtenances, to the ſaid William, as in the ſaid avowry is alſo alledged, and that he the ſaid William entered into the ſaid place in which, &c. with the appurtenances, in manner and form as the ſaid William has above in his ſaid avowry alledged; but proteſting that the ſaid William was not at the ſaid time when, &c. poſſeſſed of the ſaid place in which, &c. in manner and form as the ſaid William hath in his ſaid avowry alledged: for plea in this behalf, the ſaid Edward further ſays, that long before the ſaid time when, &c. and during the term ſo demiſed by the ſaid R. P. to the ſaid William, to wit, on the ſixteenth of November 1784, at the townſhip of Longdon, within the pariſh of Penteſbury, in the ſaid county of Salop, he the ſaid William demiſed the ſaid place in which, &c. with the appurtenances, to the ſaid Edward, to have and to hold the ſame to the ſaid Edward from the ſaid ſixteenth of November in the ſame year, until and upon the feaſt-day of the Annunciation of the Bleſſed Virgin Mary then next coming and fully to be complete and ended, at and under a certain rent to be therefore paid by the ſaid Edward to the ſaid William; by virtue of which ſaid demiſe he the ſaid E. long before the ſaid time when, &c. to wit, on the ſame day and year laſt aforeſaid, entered into the ſaid place in which, &c. with the appurtenances, and became, and until and at the ſaid time when, &c. was poſſeſſed thereof, and being ſo poſſeſſed thereof he the ſaid E. afterwards, and during the continuance of the ſaid demiſe from the ſaid William to the ſaid E. made as aforeſaid, and before the ſaid time when, &c. to wit, on the ſaid nineteenth of November 1784, put the ſaid mare in the ſaid declaration mentioned in the ſaid place in which, &c. to feed and depaſture on the graſs there then growing, and which ſaid mare was in and upon the ſaid place in which, &c. feeding and depaſturing on the graſs there then growing, from thence until the ſaid William of his own wrong, at the ſaid time when, &c. being during the continuance of the ſaid demiſe from the ſaid William to the ſaid Edward made as aforeſaid

at

at the townſhip of Longdon aforeſaid, in the county aforeſaid, took the ſaid mare in the ſaid declaration mentioned, in and upon the ſaid place in which, &c. and detained her againſt ſureties and pledges, until, &c. in manner and form as the ſaid Edward hath above thereof complained againſt him; and this, &c.; wherefore inaſmuch as the ſaid William hath above acknowledged the taking of the ſaid mare in and upon the ſaid place in which, &c. he the ſaid Edward prays judgment and his damages by reaſon of the taking and unjuſtly detaining the ſaid mare to be adjudged to him, &c.

EDWARD LAW.

And the ſaid William, as to the ſaid plea of the ſaid Edward by him above pleaded in bar to the ſaid avowry of him the ſaid William by him above made, ſays, that he by reaſon of any thing in that plea contained ought not to be barred from having and maintaining his ſaid avowry againſt him the ſaid Edward; becauſe he ſays, that true it is that he the ſaid W. demiſed to the ſaid E. the ſaid place in which, &c. with the appurtenances, and that the ſaid E. thereupon entered into the ſame in manner and form as the ſaid E. hath in his ſaid plea by him above pleaded in bar alledged; but the ſaid W. further ſays, that at the ſaid demiſe ſo made by the ſaid W. to the ſaid E. as aforeſaid, was made by him the ſaid W. to the ſaid E. in conſideration of a certain ſum of money paid for the ſame by the ſaid E. to the ſaid W. and upon this expreſs proviſo, condition, and agreement, that is to ſay, that if any cattle of and belonging to one Thomas Thompſon, of the pariſh of Penteſbury, in the ſaid county, ſhould be turned into the ſaid place in which, &c. with the appurtenances, to feed and depaſture there, that then, and in ſuch caſe, the ſaid demiſe, ſo made by the ſaid W. to the ſaid E. ſhould be from thenceforth wholly void, and ceaſe, and be determined; and that thereupon, and immediately from and after the repayment by the ſaid W. to the ſaid E. of the ſaid ſum of money ſo paid by the ſaid E. to the ſaid W. upon the granting of the ſaid demiſe, and in conſideration of the ſame, then that it ſhould and might be lawful to and for him the ſaid W. to re-enter in and upon the ſaid place in which, &c. with the appurtenances, and to have, hold, repoſſeſs, enjoy, and retain the ſame as his own former eſtate, without any regard being had to the ſaid demiſe thereof ſo made by the ſaid W. to the ſaid E. to which ſaid proviſo, condition, and agreement, ſo made as aforeſaid, at the time of the granting ſuch demiſe of the ſaid place in which, &c. to the ſaid E. he the ſaid E. fully aſſented: And the ſaid W. further ſays, that after the making of the ſaid demiſe and agreement ſo made as aforeſaid, and after the entry of the ſaid E. into and upon the ſaid place in which, &c. and ſo demiſed to him in manner and upon the proviſo, condition, and agreement aforeſaid, and during the continuance of the ſaid demiſe ſo made by the ſaid W. to the ſaid E. as aforeſaid, and long before the ſaid time when, &c. to wit, on the ſeventeenth of November 1784, divers cattle, to wit, one

Replication mits the d to defendan ſays it was in conſider of a ſum of ney paid plaintiff to fendant, and der a pen that if the tle of one were turned to *locum*, the miſe ſhould void, and u defendant's paying cons ration money might re-en the cattle of B. were tur into *locum*, fendant to ed the con ration mo and re-ente and becauſe cattle were mage feaſ &c.

one cow and two calves of and belonging to the ſaid Thomas Thompſon, were turned into the ſaid place in which, &c. and were then and there fed, and depaſtured there, with the privilege, conſent, and licence of him the ſaid Edward; thereupon the ſaid demiſe, ſo made by the ſaid W. to the ſaid E. as aforeſaid, became wholly void, and ceaſed, and determined, to wit, at the townſhip of Longdon aforeſaid, in the ſaid county: And the ſaid W. further ſays, that the ſaid demiſe, being ſo void, and having ceaſed and determined as aforeſaid, in manner and by reaſon of the premiſes laſt aforeſaid, he the ſaid W. afterwards, and before the ſaid time when, &c. to wit, on the ſame day and year laſt aforeſaid, at, &c. tendered and offered to pay to the ſaid E. the ſaid ſum of money, ſo paid by the ſaid E. to the ſaid W. upon the granting of the ſaid demiſe, ſo made as laſt aforeſaid, and in conſideration of the ſame, and then and there requeſted the ſaid E. to accept and receive the ſame from him; but the ſaid E. then and there wholly refuſed ſo to do: And the ſaid W. further ſays, that he the ſaid W. after ſuch tender and refuſal aforeſaid, and before the ſaid time when, &c. to wit, on the ſame day and year laſt aforeſaid, re-entered into and upon the ſaid place in which, &c. with the appurtenances, and then and there became re-poſſeſſed thereof, and had held, retained, and enjoyed the ſame, and hath continually from thenceforth hitherto had, held, retained, re-poſſeſſed, and enjoyed the ſame, as he lawfully might for the cauſe aforeſaid; and becauſe the ſaid mare in the ſaid declaration mentioned, after ſuch tender, and refuſal, and re-entry by the ſaid W. as aforeſaid, into and upon the ſaid place in which, &c. to wit, at the ſaid time when, &c. was wrongfully and injuriouſly in the ſaid place in which, &c. eating up and depaſturing the graſs there growing, and doing damage there, he the ſaid William well avows the taking of the ſaid mare in the ſaid place in which, &c. and juſtly, &c. for and in the name of a diſtreſs for the ſaid damages ſo by the ſaid mare then and there done and doing to the ſaid W. in the ſaid place in which, &c.; and this, &c.; wherefore, &c.

Drawn by MR. CROMPTON.

SOMERSETSHIRE, to wit. James Jarman was attached to anſwer William Hardwell, &c. for taking three horſes in the pariſh of Thubbear in the ſaid county, in a certain field or place there called Jarman's Verding.

Declaration.

Avowry. Damage feaſant.

In bar, that adjoins a and di-

And the ſaid William, as to the ſaid avowry of the ſaid James by him above made, ſays, that by reaſon of any thing in that

there from by a hedge or fence in which there is a fence and gateway leading from *locus* into the cloſe; that the tenants of *locus* ought to repair the ſaid gate and gateway, and keep the gate ſhut; plaintiff, being poſſeſſed of the ſaid cloſe, put his cattle therein, and becauſe the gate was open cattle eſcaped. A ad Plea, that *locus* adjoins the cloſe (as before) plaintiff poſſeſſed of cloſe and his cattle, and becauſe defendant had wrongfully ſet open the gate, &c.

avowry

avowry above alledged by the ſaid James, he the ſaid James ought not to avow the taking of the ſaid cattle in the ſaid field or place called Jarman's Verding, in which, &c. to be juſt, becauſe he the ſaid William ſays, that the ſaid field or place called Jarman's Verding now lieth, and at the ſaid time when, &c. did lie, and from time whereof the memory of man is not to the contrary hath lain contiguous and next adjoining on one ſide thereof to a certain field or place called Hardwell's Verding, ſituate and being in the ſaid pariſh of Thubbear, in the county of Somerſet, and ſeparated and divided therefrom by a certain hedge or fence, and in which ſaid hedge or fence long before, and at the ſaid time when, &c. there was and ſtill is a certain gate and gateway leading from and out of the ſaid field or place called Hardwell's Verding, into the ſaid field or place called Jarman's Verding, in which, &c. and the ſaid William ſays, that the ſaid James and all other the tenants and occupiers of the ſaid field or place called Jarman's Verding, in which, &c. for the time being, from time whereof the memory of man is not to the contrary, have repaired and maintained, and have been uſed and accuſtomed to repair and maintain, and ſtill of right ought to repair and maintain the ſaid gate or gateway in the ſaid hedge or fence between the ſaid field or place called Jarman's Verding, in which, &c. and the ſaid place or field called Hardwell's Verding, as often as occaſion hath required, and to keep the ſaid gate or gateway in the ſaid hedge or fence ſhut and faſtened, to prevent the eſcape of cattle from and out of the ſaid field or place called Hardwell's Verding, into the ſaid field or place called Jarman's Verding, in which, &c.: And the ſaid William further ſays, that before and at the ſaid time when, &c. he the ſaid William was poſſeſſed of and in the ſaid field or place called Hardwell's Verding, and being ſo poſſeſſed thereof, he the ſaid William, a little before the ſaid time when, &c. put the ſaid cattle in the ſaid declaration mentioned, the ſame being the proper cattle of him the ſaid William, into the ſaid field or place called Hardwell's Verding to feed and depaſture, the graſs there then growing, and being, as it was lawful for him to do for the cauſe aforeſaid: And the ſaid William further ſaith, that afterwards, and a little before the ſaid time when, &c. becauſe the ſaid gate in the ſaid hedge or fence between the ſaid field or place called Jarman's Verding, in which, &c. and the ſaid field or place called Hardwell's Verding was open, and not ſhut and faſtened, the ſaid cattle in the ſaid declaration mentioned, at the ſaid time when, &c. ſtrayed and went, without the knowledge and againſt the will of the ſaid William, from and out of the ſaid field or place called Hardwell's Verding, into the ſaid field or place called Jarman's Verding, in which, &c. and were therefore, and by reaſon, and on the account aforeſaid, until the ſaid James of his own wrong, and before the ſaid William had notice of the ſaid eſcape, at the ſaid time when, &c. took the ſaid cattle there and unjuſtly detained them againſt ſureties

and

and pledges, until, &c. in manner and form as the ſaid William hath above complained againſt him the ſaid James, and this, &c.; wherefore inaſmuch as the ſaid James hath above acknowledged the taking of the ſaid cattle in the ſaid declaration mentioned, in the ſaid place in which, &c. the ſaid William prays judgment and his damages, by reaſon of the taking and unjuſt detaining thereof, to be adjudged to him, &c.: And the ſaid William, for further plea in this behalf, as to the ſaid avowry of the ſaid James by him above made by leave, &c. ſays, that by reaſon of any thing in that avowry above alledged, he the ſaid James ought not to avow the taking of the ſaid cattle in the ſaid field or place called Jarman's Verding, in which, &c. to be juſt, becauſe he the ſaid William ſays, that the ſaid field or place called Jarman's Verding, in which, &c. now lieth, and at the ſaid time when, &c. did lie, and from time whereof, &c. hath lain contiguous and next adjoining on one ſide thereof to a certain other field or place called Hardwell's Verding, ſituate and being in the ſaid pariſh of Thubbear in the ſaid county, and ſeparated and divided therefrom by a certain hedge or fence, and in which ſaid hedge and fence long before, and at the ſaid time when, &c. there was and ſtill is a certain gate or gateway leading from and out of the ſaid field or place called Hardwell's Verding, into the ſaid field or place called Jarman's Verding, in which, &c.: And the ſaid William further ſays, that before and at the ſaid time when, &c. he the ſaid William was poſſeſſed of and in the ſaid laſt-mentioned field or place called Hardwell's Verding, and being ſo poſſeſſed thereof, he the ſaid William, a little before the ſaid time when, &c. put the ſaid cattle in the ſaid declaration mentioned, &c. being the proper cattle of him the ſaid William, into the ſaid field or place called Hardwell's Verding, to feed and depaſture, the graſs there then growing and being, as it was lawful for him to do, for the cauſe laſt aforeſaid: And the ſaid William further ſaith, that becauſe afterwards, and a little before the ſaid time when, &c. the ſaid James had wrongfully, and without the privity or knowledge of the ſaid William, cauſed the ſaid gate in the ſaid hedge or fence ſo ſeparating and dividing the ſaid field or place called Jarman's Verding, in which, &c. and the ſaid laſt-mentioned field or place called Hardwell's Verding, to be ſet open, and becauſe the ſaid gate was all the ſaid time when, &c. ſo open, the ſaid cattle in the ſaid declaration mentioned, at the ſaid time when, &c. ſtrayed and went, without the knowledge and againſt the will of the ſaid William, from and out of the ſaid field or place called Hardwell's Verding, into the ſaid field or place called Jarman's Verding, in which, &c. and were there for and by reaſon, and on the account laſt aforeſaid, until the ſaid James of his own wrong, and before he the ſaid William had notice of the ſaid laſt-mentioned eſcape, at the ſaid time when, &c. took the ſaid cattle there and unjuſtly detained them againſt ſureties and pledges, until, &c. in manner

and

and form as the ſaid William hath above complained againſt him, and this, &c.; wherefore, &c.

G. ROOKE.

And the ſaid James, as to the ſaid plea of the ſaid William by him firſt above pleaded in bar to the ſaid avowry of the ſaid James by him above made, ſays, that by reaſon of any thing by the ſaid William in that plea above alledged, he ought not to be barred from avowing the taking of the cattle in the ſaid place in which, &c. to be juſt, becauſe he ſays that true it is that the ſaid field or place called Jarman's Verding, in which, &c. lies, and at the ſaid time when, &c. did lie, and from time whereof the memory of man is not to the contrary, hath lain contiguous and next adjoining on one ſide thereof to the ſaid field or place called Hardwell's Verding, ſituate and being in the ſaid pariſh of Thubbear, in the ſaid county of S. and ſeparated and divided therefrom by a certain hedge or fence, and in which ſaid hedge or fence long before and at the ſaid time when, &c. there was and ſtill is a certain gate and gateway leading from and out of the ſaid field or place called Jarman's Verding, in which, &c. as the ſaid William hath in his ſaid plea in bar in that behalf above alledged; but the ſaid James further ſays, that the ſaid cattle, at the ſaid time when, &c. were wrongfully and injuriouſly, in the ſaid place called Jarman's Verding, in which, &c. feeding and depaſturing on the graſs there then growing, and doing damage there in manner and form as the ſaid James hath in his ſaid avowry above alledged; without this, that the ſaid James, and all other the tenants and occupiers of the ſaid field or place called Jarman's Verding, in which, &c. for the time being, from time whereof the memory of man is not to the contrary, have repaired and maintained, and been uſed and accuſtomed to repair and maintain, and ſtill of right ought to repair and maintain the ſaid gate or gateway in the ſaid hedge or fence between the ſaid field or place called Jarman's Verding, in which, &c. and the ſaid field or place called Hardwell's Verding, as often as occaſion hath required, and to keep the ſaid gate or gateway in the ſaid hedge or fence ſhut and faſtened, to prevent the eſcape of cattle from and out of the ſaid field or place called Hardwell's Verding into the ſaid field or place called Jarman's Verding, in which, &c. as the ſaid William hath in his aforeſaid plea in bar in that behalf alledged, and this, &c.; wherefore, &c.: And the ſaid James, as to the ſaid plea of the ſaid William by him laſtly above pleaded in bar to the aforeſaid avowry of the ſaid James by him above made, ſays, that he, by reaſon of any thing by the ſaid William in that plea above alledged, ought not to be barred from avowing the taking of the ſaid cattle in the ſaid place in which, &c. to be juſt, becauſe he ſays that true it is that the ſaid field or place called Jarman's Verding, in which, &c. lies, and at the ſaid time when, &c. did, and from time whereof the memory of man is not to the contrary, hath lain contiguous and next adjoining on one ſide thereof to the ſaid field or place called Hardwell's

Replication admits the ... tion of *locus* ... ſays, that ... cattle ... wrongfully ... *locus*; ... of the tenants *locus* being ... liged to repair ... to ad Plea, ... mits, &c. ... that the ... were wrongfully, &c. ... verſe of his ... ing opened ... gate

well's Verding, ſituate and being in the ſaid pariſh of Thubbear, in the ſaid county of S. and ſeparated and divided therefrom by a certain hedge and fence, and in which ſaid hedge or fence long before and at the ſaid time when, &c. there was and ſtill is a certain gate and gateway leading from and out of the ſaid field or place called Hardwell's Verding, into the ſaid field or place called Jarman's Verding, in which, &c. as the ſaid William hath in his ſaid plea in bar in that behalf above alledged; but the ſaid James further ſays, that the ſaid cattle, at the ſaid time when, &c. were wrongfully and injuriouſly in the ſaid place called Jarman's Verding, in which, &c. feeding and depaſturing on the graſs there then growing, and doing damage there in manner and form as the ſaid James hath in his ſaid avowry above alledged, without this, that the ſaid cattle, at the ſaid time when, &c. ſtrayed and went from and out of the ſaid field or place called Hardwell's Verding, into the ſaid field or place called Jarman's Verding, in which, &c. by reaſon and on account of the ſaid James having cauſed the ſaid gate in the ſaid hedge or fence ſo ſeparating and dividing the ſaid field or place called Hardwell's Verding, and the ſaid field or place called Jarman's Verding, in which, &c. to be ſet open, as the ſaid William hath in his ſaid laſt plea in bar above alledged, and this he is ready to verify; wherefore he prays judgment and a return of the ſaid cattle, together with his damages and coſts, according to the form of the ſtatute, &c. to be adjudged to him, &c.

S. LAWRENCE.

Rejoinders. Iſſues on traverſes.

This cauſe was tried at Spring aſſizes 1789, and verdict for plaintiff, *coram* Buller.

...wry and cog-...nce (for tak-...ſheep in a ...e called A. ...; that the ... *in quo* is ...re, and ... by the ... of A. B. ... is divided ... number of ... gates, ... are de-... by the ... the ma-... that the ...ided five ... gates to ... the de-..., and ... the ſheep were doing damage he well, &c.

AND the ſaid defendants, by A. B. their attorney, come, &c. (firſt cognizance as bailiffs of W. Ratcliffe, eſquire, acknowledge taking the ſheep in *locus* damage feaſant, in W. R.'s freehold) and for further avowry and cognizance in this behalf by leave, and the ſaid G. Shaw in his own right well avows, and the ſaid other defendants, as bailiffs of the ſaid G. S. well acknowledge the taking the ſaid ſheep in the ſaid place called Shey Hey, in which, &c. and juſtly, &c. becauſe they ſay that the ſaid place called S. Hey, in which, &c. now is, and at the ſaid time when, &c. was called and known as well by the name of Hey as by the name of Shey Hey, and contains, and at the ſaid time when, &c. did contain one hundred and fifty acres of paſture, and is, and at the ſaid time when, &c. was, and from time whereof, &c. hath been an antient paſture, divided and allotted into thirty-one cowgates, each cowgate conſiſting of paſture there for one cow, or two calves in lieu thereof, to be had

or taken yearly from the ſixteenth of April to the ſixteenth of September, and lying and being within the manor of M. in the ſaid county, and parcel of the ſame manor, which ſaid cowgates are, and at the ſaid time when, &c. were, and for all the time aforeſaid have been cuſtomary tenements of the ſame manor, and demiſed and demiſeable by the lord of the ſaid manor, or by his ſteward of the court of the ſaid manor for the time being, by the copy of the rolls of the court of the ſaid manor, to any perſon or perſons willing to take the ſame, in fee ſimple or otherwiſe, at the will of the lord, according to the cuſtom of the ſaid manor, and that W. Radcliffe, eſquire, being lord of the ſaid manor long before the ſaid time when, &c. to wit, at the court baron of the ſaid W. R. holden in and for the ſaid manor on the third of April 1733, before A. R. then his ſteward of his court of his ſaid manor, by the copy of the rolls of the court of his ſaid manor, granted to the ſaid G. S. five cowgates, with the appurtenances, parcel of the ſaid cowgates in the ſaid place, in which, &c. to have and to hold to the ſaid G. S. his heirs and aſſigns for ever, at the will of the lord, according to the cuſtom of the ſaid manor; by virtue of which ſaid grant thereof, he the ſaid G. S. became, and at the ſaid time when, &c. was, and yet is ſeiſed of the ſaid five cowgates, with the appurtenances, in the ſaid place in which, &c. as of fee and right at the will of the lord, according to the cuſtom of the ſaid manor; and becauſe the ſaid ſheep in the ſaid declaration mentioned, between the ſixteenth of April and the ſixteenth of September 1749. to wit, at the ſaid time when, &c. were in the ſaid place in which, &c. eating the graſs there growing, and doing damage to the ſaid paſture thereof, ſo that the ſaid G. S. could not have and enjoy the ſaid cowgates there in ſo ample and beneficial a manner as he ought of right to have had the ſame, he the ſaid G. S. in his own right well avows, and the ſaid other defendants, as bailiffs of the ſaid G. S. well acknowledge the taking of the ſaid ſheep in the ſaid place in which, &c. and juſtly, &c. as a diſtreſs for the ſaid damage ſo done and doing there, and this, &c.; wherefore, &c.

EDW. BOOTLE.

And the ſaid plaintiff ſays, that for the reaſon in the ſaid firſt cognizance above alledged, they the ſaid defendants ought not, as bailiffs of the ſaid W. R. eſquire, to acknowledge the taking the ſaid ſheep in the ſaid place in which, &c. called the S. H. in which, &c. to be juſt, becauſe he ſays, that true it is that the ſaid place called the S. H. in which, &c. is, and at the ſaid time was called and known as well by the name of, &c. as, &c. and doth contain, and at the ſaid time when, &c. did contain one hundred and fifty acres of paſture, and that the ſaid W. R. eſquire, for all the time aforeſaid, was and ſtill is ſeiſed of and in to the manor of H. only ſeparated therefrom by a ſmall rivulet, which is not ſufficient to prevent cattle from eſcaping from the common into the ſame; that C D demiſed the ſame to plaintiff, whereby he became entitled to common of paſture, and that plaintiff and his father put their ſheep therein, and becauſe the ſame was not ſeparated by a proper hedge from the ſame, the cattle eſcaped and ſtrayed.

Plea in bar, admits that *locus* is parcel of the manor, but ſays that one C. D. was poſſeſſed of the manor of H. and alſo of a houſe and premiſes contiguous to a common belonging

the ſaid manor of H. in his demeſne as of fee, and that the ſaid place in which, &c. is, and for all the time aforeſaid hath been parcel of the ſaid manor, as in the ſaid firſt cognizance is above alledged; but the ſaid plaintiff ſays, that long before the ſaid time when, &c. ſir A. Hey, baronet, was ſeiſed of and in the manor of Harthwaite, in the county aforeſaid, with the appurtenances, whereof a certain large waſte and common called S. Moor, time out of mind hath been and ſtill is parcel, and alſo of and in the meſſuage, land, and premiſes hereinafter mentioned to be demiſed and granted with their appurtenances, at the ſaid time of the demiſe, whereof parcel of the ſame manor in his demeſne as of fee, which ſaid waſte and common called S. Moor lays, and at the ſaid time when, &c. lay, and time out of mind hath lain contiguous and next adjoining to the ſaid place called S. H. in which, &c. ſeparated from them only by a ſmall rivulet called C. Dyke, running between them, which ſaid rivulet is not, and at the ſaid time when, &c. was not, and time out of mind hath not been a ſufficient fence to prevent geldings, cows, mares, heifers, and ſheep from ſtraying and eſcaping from and out of the ſaid waſte and common called S. Moor, into the ſaid place in which, &c. and without any other hedge, fence, incloſure, or diviſion whatſoever ſeparating and dividing the ſame: And the ſaid ſir A. and all thoſe whoſe eſtate he had of and in the ſaid manor, with the appurtenances whereof, &c. from time whereof, &c. have had, and have uſed, and been accuſtomed to have, for himſelf and themſelves, his and their farmers and tenants of his ſaid manor, and of any lands and tenements, parcel of the manor, and of the meſſuage, lands, and tenements hereinafter mentioned to be demiſed and granted reſpectively with the appurtenances, common of paſture, by reaſon of neighbourhood in the ſaid place called S. H. in which, &c. and during all the time aforeſaid of right have intercommoned, and during all the time aforeſaid have of right been uſed and accuſtomed to intercommon, and ſtill of right ought to intercommon, by reaſon of neighbourhood, every year, at all times of the year, in the ſame place in which, &c. with all their geldings, cows, heifers, and ſheep, levant and couchant upon the ſaid manor, and the reſpective tenements aforeſaid, or any of them, and feeding and depaſturing in the ſaid waſte or common called S. Moor; and the ſaid ſir A. being ſo ſeiſed of the ſaid manor, with the appurtenances whereof, &c. and of the ſaid meſſuage, lands, and tenements, with the appurtenances hereinafter mentioned, he the ſaid ſir A. long before the ſaid time when, &c. to wit, on the tenth of March 1709, at M. aforeſaid, demiſed, granted, and to farm let unto the ſaid plaintiff the ſame meſſuage, lands, and tenements, with the appurtenances, by the deſcription of one meſſuage or tenement at S. Hall in S. in the county aforeſaid, then being in the poſſeſſion of the ſaid plaintiff, his aſſignee or aſſignees, together with all houſes, outhouſes, barns, buildings, lands, cloſes, meadows, commons, and paſtures, and all other the appurtenances to the ſame belonging, to have

and to hold the ſame to the ſaid plaintiff and his aſſignees, from and after the ſecond of February, year laſt paſt, for and during the natural lives of him the ſaid plaintiff and of S. his wife, and of Abraham his ſon, and the ſurvivors and ſurvivor of them, by virtue of which ſaid demiſe, he the ſaid plaintiff, long before the ſaid time when, &c. entered into the ſaid tenements ſo demiſed to him, with the appurtenances, and was and ſtill is ſeiſed thereof in his demeſne as of freehold: And the ſaid plaintiff further ſaith, that he the ſaid plaintiff, at the time of the making the ſaid demiſe to him and before, had held and occupied the ſaid meſſuage and tenements, with the appurtenances, demiſed to him as aforeſaid, from and under the ſaid ſir A. as his farmer and tenant thereof; and that A. Wood, father of the ſaid plaintiff, had for many years before, and until the ſaid plaintiff's holding the ſame, alſo held the ſame from and under the ſaid ſir A. as his farmer and tenant thereof; and the ſaid plaintiff and his ſaid father, during all the time of their reſpective holding the ſame as aforeſaid, in right of the ſaid farm, had, uſed, and enjoyed common of paſture and feeding for all their geldings, mares, cows, heifers, and ſheep levant and couchant upon the ſaid tenements, with the appurtenances, in the ſaid waſte or common called S. Moor, to feed on the graſs then growing there every year, at all times of the year, as belonging to and occupied by the ſaid tenants; and the ſaid plaintiff being ſo ſeiſed thereof before the ſaid time when, &c. to wit, on the thirteenth of May 1739, put the ſaid ſheep in the ſaid declaration mentioned, being his own ſheep levant and couchant upon the ſaid tenements, into the ſaid waſte or common called S. Moor, to feed on the graſs there then growing, and uſe his common of paſture and feeding there; and becauſe the ſaid place in which, &c. was not ſeparated, &c. &c. which ſaid ſheep, ſo being there for the cauſe aforeſaid, afterwards, to wit, on the ſame day and year, of their own accord erred and ſtrayed out of ſaid waſte or common called S. Moor, into the ſaid place called S. H. in which, &c. and eat up the graſs there growing, uſing his ſaid common of paſture and feeding there by reaſon of the ſaid neighbourhood, as it was lawful for him to do, from thence until the ſaid defendants afterwards, to wit, on the ſame day and year, took the ſaid ſheep in the ſaid place in which, &c. ſo depaſturing there, for the cauſe aforeſaid, and on the occaſion aforeſaid, and unjuſtly detained the ſame againſt ſureties and pledges, until, &c. as the ſaid plaintiff above complains againſt them, and this, &c.; wherefore, &c. [A like plea to laſt avowry.]

R. DRAPER.

And the ſaid defendants, as to the ſaid plea of the ſaid plaintiff above pleaded in bar to the firſt cognizance of the ſaid defendants, ſay, that they, by any thing by that plea above alledged, ought not to be barred from having a return of the ſaid ſheep adjudged to them, becauſe they ſay, that the ſaid ſheep of the ſaid plaintiff, at

Replication to the laſt plea, that the ſheep were in *lieu* of plaintiff's own wrong, and traverſe of plaintiff's right of common.

at the ſaid time when, &c. were in the aforeſaid one hundred and fifty acres of paſture in which, &c. eating the graſs there growing, and doing damage there, of the wrong and injury of the ſaid plaintiff; without this [traverſe of preſcription for common over *locus per cauſe de vicinage*] in manner and form as the ſaid plaintiff hath in his ſaid plea in bar in that behalf alledged, and this, &c. wherefore, &c. (A like replication to the other plea.)

EDW. BOOTLE.

In the Common Pleas. Eaſter Term, 18. Geo. 3.

WESTMORLAND, to wit. Declaration in replevin by Richard Brown againſt Peter Fordman, for taking three horſes in Moor Cloſe.

Avowry for taking cattle; 1ſt, *non cepit*; 2d, that the *locus in quo* was the property of one A. B. for a long term of years, and that he demiſed ſame to the defendant, and becauſe the cattle were doing damage there he ſeized them.

AVOWRY 1ſt, *non cepit* 2d: And for a further plea in this behalf he the ſaid Peter, by leave, &c. well avows the taking of the ſaid cattle in the ſaid declaration mentioned, in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that the ſaid place in which, &c. long before, and at the ſaid time when, &c. was and ſtill is a certain cloſe, containing by eſtimation nineteen acres, and called and known as well by the name of Middleſexborough as by the name of Moor Cloſe: And the ſaid Peter further ſays, that long before the ſaid time when, &c. to wit, on the ſecond day of February 1775, one William Norton, eſquire, was lawfully entitled to the ſaid cloſe in which, &c. for the remainder of a certain long term of nine hundred and ninety-nine years, which is yet unexpired; and being ſo entitled thereto, he the ſaid William, before the ſaid time when, &c. to wit, on, &c. at, &c. aforeſaid, demiſed the ſaid cloſe in which, &c. with the appurtenances, to the ſaid Peter, to have and to hold the ſame to the ſaid Peter from thenceforth for and during the term of one whole year, and from the end of that year from year to year at the will of the ſaid William and Peter; by virtue of which ſaid demiſe he the ſaid Peter afterwards, to wit, on the nineteenth day of March 1776 aforeſaid, entered into the ſaid cloſe in which, &c. and became, and at the ſaid time when, &c. was and ſtill is thereof poſſeſſed, and becauſe the ſaid cattle in the ſaid declaration mentioned at the ſaid time when, &c. were in the ſaid cloſe ſo as aforeſaid demiſed to the ſaid Peter, eating up the graſs and oats of the ſaid Peter there then lying, growing, and being, and doing damage there; therefore the ſaid Peter well avows the taking of the ſaid cattle there, and as and for a diſtreſs for the ſaid damage, and juſtly, &c.; and this, &c.; wherefore, &c. and a return of the ſaid cattle, together with his damages in this behalf ſuſtained, according to the form of the ſtatute in ſuch made and provided, to be adjudged him, &c.

W. DAVY.

Plea in bar. Allotment under an incloſing act, of a cloſe which lay contiguous to plaintiff's cloſe allotted under the ſame act, and through defect of defendant's fences, the cattle eſcaped into cloſe of defendant, who was obliged under the act to make ſame, and keep them in repair.

And the ſaid Richard, as to the ſaid avowry of the ſaid Peter by him above made, ſays, that the ſaid Peter, by reaſon of any thing

therein contained, ought not to avow the taking of the ſaid cattle in the ſaid cloſe in which, &c. to be juſt; becauſe proteſting that the ſaid avowry of the ſaid Peter by him in manner and form aforeſaid made, and the matter therein contained, are not ſufficient in law for the ſaid Peter to avow the taking of the ſaid cattle in the ſaid cloſe in which, &c. to be juſt; for plea in this behalf the ſaid Richard ſays, that as well the ſaid cloſe in which, &c. as a certain other cloſe or parcel of land, containing by eſtimation twenty-eight acres, lying and being in the pariſh aforeſaid, and contiguous and next adjoining to the ſaid cloſe in which, &c. and on the north weſt ſide thereof, and not ſeparated or divided therefrom by any ſufficient hedge or fence, which before and at the ſaid time when, &c. was and now is in the poſſeſſion of one William Norton, eſquire, and alſo a certain other cloſe of land lying and being in the pariſh aforeſaid called *Metty Moor Cloſe*, otherwiſe Moor Field Cloſe, from time whereof the memory of man is not to the contrary until the making of the award and allotments hereafter mentioned, were parcel of certain tracts or parcels of common and waſte grounds called and known by the reſpective names of *Temple Sowerby Moor, the Down Moor, the Whims, and Parſon's Cloſe*, within the pariſh aforeſaid, and that as well the ſaid cloſe in which, &c. as the ſaid cloſe or parcel of land now in the poſſeſſion of the ſaid William Norton from the time of the making of the award and allotment hereafter mentioned, have lain, and at the ſaid time when, &c. did lie, and ſtill do lie contiguous and next adjoining to the ſaid cloſe called Metty Moor Cloſe, otherwiſe Moor Field Cloſe: And the ſaid Richard further ſays, that by a certain act of parliament made before the ſaid firſt time when, &c. *i. e.* at the parliament of our lord the king, at a ſeſſion thereof holden at Weſtminſter, in the thirteenth year of his reign, intitled, "An "Act for the dividing and incloſing ſeveral Tracts or Parcels of "Common and Waſte Ground, called or known by the reſpec-"tive names of Temple Sowerby Moor, the Down Moor, the "Whims, and Parſon's Cloſe, within the pariſh of Kirby Moor, "in the county of Weſtmorland;" reciting, that whereas there were ſeveral tracts or parcel of common and waſte ground, called and known by the reſpective names of Temple Sowerby Moor, Down Moor, the Whims, and Parſon's Cloſe, lying and being in the pariſh of Kirby, in the county of Weſtmorland: And whereas William Norton, eſquire, in right of Mary his wife, George Atkinſon, George Salkeld, Evan Emerſon, John Atkinſon, and other owners and proprietors of houſes and lands in the townſhip or diviſion of Temple Sowerby, in the pariſh of Kirby aforeſaid, were entitled to the right of common or other right in and upon the ſaid common and waſte grounds: And that whereas a conſiderable advantage would ariſe to the ſeveral perſons intereſted in the ſaid common or waſte grounds if the ſame were divided into ſpecific allotments and incloſed, it was enacted by the king's moſt excellent majeſty, by and with the conſent and advice of the lords ſpiritual and temporal, and commons in that preſent

parliament aſſembled, and by the authority of the ſame, that Daniel Robinſon, of Dufton, in the ſaid county of Weſtmorland, eſquire, Thomas Heclis, of Appleby Caſtle, in the ſaid county of Weſtmorland, and Thomas James, of Penrith, in the county of Cumberland, gentleman, and their ſucceſſors, to be elected in manner thereinafter mentioned, ſhould be commiſſioners for dividing and allotting the ſaid common and waſte grounds, and putting that act in execution; and it was by the ſaid acts further enacted (amongſt other things) by the authority aforeſaid, that the commiſſioners, or any two of them, ſhould, as ſoon as conveniently might be after the boundaries ſhould have been perambulated and ſettled as in the ſaid act is mentioned, make, or cauſe to be made a ſurvey or admeaſurement, which ſhould be reduced into writing, and alſo a map or plan of the ſaid common or waſte ground, whereon ſhould be deſcribed and expreſſed the numbers of acres, roods, and perches contained in the ſaid tracts and parcels of common and waſte grounds, with all the abuttals and boundaries thereof: And it was by the ſaid act further enacted (among other things) by the authority aforeſaid, that as ſoon as conveniently might be after all ſuch claims and objections as ſhould be made in purſuance of that act ſhould be ſettled and determined, the ſaid commiſſioners, or any two of them, ſhould ſet out as certain, and appoint as many places as they ſhould think neceſſary for ſtone quarries, gravel pits, clay pits, and watering places upon the ſaid common and waſte grounds, for the common uſe and benefit of all the owners and occupiers of houſes or lands within the ſaid townſhip or diviſion of Temple Sowerby aforeſaid, for their houſes, lands, and cattle therein, but not for any elſewhere, and alſo proper public highways in and upon, over and through the ſaid common and waſte grounds, with the breadth thereof, which ſhould be ſixty feet at leaſt between the ditches, and alſo private ways, bridges, drains, and watercourſes in, over, and through the ſame, for the uſe of the ſeveral proprietors thereof, and order, direct, and appoint ſuch public highways and private ways, bridges, drains, and watercourſes to be made and kept in repair by ſuch owners or occupiers of allotments of ſaid common and waſte grounds, or perſons, or bodies politic or corporate intereſted in the ſaid diviſion and incloſure, and in ſuch proportions and ſhares, and in ſuch manner and form, or by ſuch other ways and means as to the ſaid commiſſioners, or any two of them, ſhould ſeem proper and convenient; and that from and after the making and finiſhing of ſuch public highways and private ways ſo to be ſet out as aforeſaid, it ſhould not be lawful for any perſon on foot or on horſeback, or with any cattle or carriages whatſoever, to uſe any ways either public or private in, through, or upon the ſaid common or waſte grounds, other than ſuch new public highways and private highways as ſhould be ſet out and appointed as aforeſaid; and the ſaid commiſſioners, or any two of them, ſhould in the next place ſet out, allot, and aſſign unto and for the ſaid George Atkinſon ſo much of the ſaid common and waſte

waſte grounds as would (quantity and quality conſidered) be equal to fifteen acres thereof, to be eſtimated or computed at a medium or average value for and in conſideration of his bearing and defraying the charges and expences of procuring and obtaining that preſent act; and they the ſaid commiſſioners, or any two of them, ſhould apportion, divide, ſet out, allot, appoint, and aſſign the reſidue of the ſaid common and waſte grounds unto, for, and amongſt the ſaid William Norton, George Atkinſon, John Salkeld, Evan Emerſon, John Atkinſon, and the ſeveral other perſons and bodies politic and corporate, having right, intereſt, or property in or upon the ſame, according to their ſeveral and reſpective rights, intereſts, or properties therein: And it was by the ſaid act further enacted (amongſt other things) by the authority aforeſaid, that after the ſaid commiſſioners ſhould have finiſhed the ſaid diviſion purſuant to the direction of that act, they, or any two of them, ſhould form, and draw up, and cauſe to be fairly engroſſed upon parchment, and then duly execute under their hands and ſeals an award or inſtrument in writing, which ſhould expreſs, ſpecify, and aſcertain the quantity in ſtatute meaſure of acres, roods, and perches contained in the ſaid common or waſte grounds intended to be divided or incloſed, and alſo the quantity of every ſeveral and reſpective allotments thereof, and a deſcription of the ſituation, abuttals, and boundaries of the ſame, and alſo ſuch rules, orders, and directions for the hedging, fencing in, and ditching thereof, and for preſerving and maintaining ſuch hedges, ditches, and fences, and for laying out, making, and repairing public highways and private ways, bridges, gates, ſtiles, drains, and watercourſes, not only in and over, and through the ſaid common and waſte grounds, and the allotments to be made thereof, but alſo in, over, and through the ancient incloſures within the ſaid townſhip and diviſion of Temple Sowerby aforeſaid, and for working the ſaid quarries, and ſuch other rules, orders, and regulations, matters, and determinations, for perfecting the ſaid diviſion and incloſure as to the ſaid commiſſioners, or any two of them, ſhould ſeem neceſſary and proper, to be in the ſame award inſerted, to which ſaid award ſhould be annexed a ſurvey or plan of the ſaid common or waſte grounds, ſigned by the ſaid commiſſioners, or any two of them, wherein the ſaid ſeveral allotments, public highways, and private ways, bridges, ways, gates, ſtiles, drains, watercourſes, and other matters and things therein-before directed, or proper to be directed thereon, ſhould be fairly ſet off, marked, and expreſſed; which ſaid award or inſtrument, and ſurvey or plan, ſhould be lodged and depoſited in a cheſt for the purpoſe in the chapel of Temple Sowerby, in the ſaid pariſh of K. ſo that any perſon intereſted therein might have acceſs to, and at their own expence take copies thereof, alſo the ſaid award or inſtrument, and a ſurvey or plan, together with the appointments of the new commiſſioners and arbitrators, and the oaths to be reſpectively taken by them, and all awards to be made by the ſaid arbitrators ſhould be inrolled in the office of the clerk of the peace of the ſaid county of

Weſtmorland, to the end recourſe might be had to the ſame by any perſon whomſoever: And it was by the ſaid act (amongſt other things) further enacted, by the authority aforeſaid, that from and immediately after the ſaid award or inſtrument ſhould be enrolled as aforeſaid, the ſeveral ſhares and allotments of the ſaid common and waſte grounds ſo to be ſet out as aforeſaid ſhould be in lieu of and in full compenſation and ſatisfaction for all rights of common and other former property, privileges, right, title, intereſt, claim, and demand whatſoever, which any of the perſons, or bodies politic or corporate that ſhould or might be entitled to any ſuch ſhares or allotments, ſhould or might have had in, over, and upon the ſaid common and waſte grounds, or any part thereof, and that all right of common ſhould, from and after that time, ceaſe and be for ever barred, aboliſhed, and extinguiſhed, and that all and every perſon and perſons, body and bodies politic and corporate entitled to any ſuch allotments, ſhould and were thereby required to accept the ſame within the ſpace of three calendar months next after the enrolling of the ſaid award or inſtrument, and alſo ſhould, within one year next after the enrolling thereof at his, her, or their charges reſpectively, incloſe, hedge, ditch, or fence in his or their ſeveral allotments, in ſuch manner and form as ſhould be directed and ordered in and by the ſaid award; and in caſe any perſon or perſons entitled to ſuch allotments, ſhould neglect or refuſe to accept, incloſe, and fence the ſame as aforeſaid within the ſeveral and reſpective times as before-mentioned, then the ſaid commiſſioners, or any two of them, ſhould cauſe ſuch allotment or allotments to be incloſed, hedged, ditched, and fenced, and the expence thereof to be paid in manner in the ſaid act after-mentioned, as by the ſaid act now remaining of record at Weſtminſter aforeſaid more fully appears: And the ſaid Richard further ſays, that the ſaid D. R. T. H. and T. J. the commiſſioners appointed by the ſaid act, did afterwards, and before the ſaid time when, &c. to wit, on the firſt day of June 1774, cauſe to be made and reduced into writing a ſurvey or admeaſurement and plan of the ſaid common or waſte grounds, and did therein deſcribe and expreſs the number of acres, roods, and perches contained in the ſaid tracts or parcels of common and waſte grounds within the abuttals and boundaries thereof, and did then and there ſign the ſame in purſuance of and according to the tenor and effect of the ſaid act, to wit, at the pariſh aforeſaid: And the ſaid Richard further ſays, that the ſaid D. R. T. H. and T. J. did afterwards, and before the ſaid time when, &c. on the eighth day of July, in the year laſt aforeſaid, at the pariſh aforeſaid, form and draw up, and cauſe to be fairly engroſſed upon parchment, and duly executed under their hands and ſeals a certain award or inſtrument in writing, and did then and there annex to the ſame the ſaid plan ſo ſigned by them as aforeſaid, in purſuance of and according to the tenor and effect of the ſaid act, and which award, or inſtrument and plan to all other matters and things in and by the ſaid act directed to be enrolled afterwards and before the ſaid time when, &c. to wit, on the twenty-

twenty-third day of December in the year laſt aforeſaid, at the pariſh aforeſaid, was duly enrolled in the office of the clerk of the peace for the ſaid county of Weſtmorland, according to the directions of the ſaid act, by which ſaid award or inſtrument in writing the ſaid D. R. T. H. and T. J. did (amongſt other things) award unto the ſaid William Norton and Mary his wife, their heirs, executors, adminiſtrators, and aſſigns, in full ſatisfaction of all their right of common in and upon the ſaid common and waſte grounds, according to his, her, and their reſpective rights and intereſts therein, all thoſe parts and parcels of the ſaid common a. the ſame were ſet out thereon as follows: *i. e.* that part of the ſaid allotments ſet and aſſigned for and in reſpect of the eſtate at Olerou Bank and Temple Sowerby, then late belonging to Sir William Dalſton, then the eſtate of the ſaid Mary, the wife of the ſaid William Norton, as the ſame was diſtinguiſhed in the ſaid plan, and marked with the letter *B.* and contained fourteen acres two roods and twenty-eight perches, and that part of the ſaid allotment ſet out and aſſigned for and in reſpect of him the ſaid William Norton, late J. F. and A. Y. as the ſame was diſtinguiſhed in the ſaid plan marked with the number and letter 2 *B.* and contained thirty-two acres one rood and thirty-one perches; which ſaid laſt-mentioned ſhares or allotments were bounded by the ſhare thereinafter ſet out to Elizabeth Fallowfield, on the ſouth-eaſt by the ſhares thereinafter ſet out to Joſhua Williamſon and William Gowling on the north-weſt, by the turnpike road on the north-eaſt, by the road leading over the ſaid common to Bolton on the ſouth-weſt, and did alſo thereby award unto Elizabeth Fallowfield, ſpinſter, her heirs, executors, adminiſtrators, and aſſigns, in lieu and full ſatisfaction of her right and intereſt in and upon all the ſaid common or waſte grounds, all thoſe parts or parcels of the ſaid common as the ſame were ſet out thereon and diſtinguiſhed in the ſaid plan marked with the letter *C.* containing together forty-one acres two roods and thirty-one perches, one part whereof was bounded by the ſhare of the ſaid William Norton and Mary his wife on the north-weſt, by Kirby Moor on the ſouth-eaſt, by the turnpike road on the north-eaſt, and by the ſaid road to Bolton on the ſouth-weſt, another part whereof was bounded by the old incloſed lands on the north-eaſt, by the turnpike road on the ſouth-weſt, and by the pond near Spital Corner on the north-weſt; another part was bounded by the ſaid turnpike road on the north-eaſt, on the old incloſed lands on the ſouth-weſt, by an occupation road on the ſouth-eaſt, and by the waſte grounds near the ground of Temple Sowerby aforeſaid on the north-weſt; and the ſaid D. R. T. H. and T. J. did, by the ſaid award or inſtrument in writing, award and order that the ſeveral perſons who had ſhares ſet out and allotted to them upon the ſaid common and waſte grounds in moſt parts and places as were thereinafter ſet out to them, and that the ſeveral perſons who had ſhares or allotments ſet out to them on the ſaid common and waſte grounds, their heirs, executors, adminiſtrators, ſucceſſors, and aſſigns,

aſſigns reſpectively at all times thereafter, did and ſhould maintain, uphold, ſupport, and keep the ſame in good and ſufficient repair, *i. e.* the ſaid E. Fallowfield to make the fence between her ſhare and Kirby Moor, and ninety-five yards belonging at the ſouth-weſt, and between her ſhare and the ſhare of William Norton in right of his wife, and the ſaid William Norton, eſquire, in right of his wife, to make the remainders of the fence between his ſhare and the ſhare of the ſaid Elizabeth Fallowfield; and the ſaid D. Robinſon, Thomas H. and Thomas James did, by the ſaid award or inſtrument in writing, award and order that the ſeveral perſons who had ſhares ſet out ſhould accept the ſame within three calendar months next after the execution of that their award, and ſhould make and complete ſuch fences within one year from the date thereof, and that all right of common ſhould, immediately after the execution of that their award, ceaſe and be for ever hereafter barred and extinguiſhed, as by the ſaid award or inſtrument in writing duly executed and inrolled as aforeſaid, more fully appears; of which ſaid act of parliament, and award or inſtrument in writing, the ſaid William Norton afterwards, and before the ſaid time when, &c. and within three calendar months next after the execution of the ſaid award, had notice, and then and there duly accepted the ſaid allotment ſo awarded unto him, and the ſaid Mary his wife, or to either of them as aforeſaid; by virtue whereof the ſaid William Norton, and all other the tenants and occupiers of the ſaid allotment, from thenceforth hitherto have been, and at the ſaid time when, &c. were and ſtill are liable to make and repair ſufficient hedges and fences between ſo much of the ſaid allotment ſo allotted to him the ſaid William Norton and Mary his wife as aforeſaid, as adjoins upon the ſaid allotment ſo allotted to the ſaid Elizabeth Fallowfield as aforeſaid, as is by the ſaid award ordered and directed to be made by the ſaid William Norton in right of his ſaid wife: And the ſaid Richard further ſays, that the ſaid allotment ſo allotted to the ſaid William Norton as aforeſaid, and the ſaid cloſe in which, &c. and the ſaid other cloſes thereto adjoining, now in the poſſeſſion of the ſaid William Norton, now are, and at the ſaid time when, &c. were one and the ſame cloſe or parcel of land, and not other and different, to wit, at the pariſh aforeſaid, and that the ſaid allotment ſo allotted to the ſaid Elizabeth Fallowfield as aforeſaid, and the ſaid cloſe called Metty Moor Cloſe, otherwiſe Moorfield Cloſe, now are, and at the ſaid time when, &c. were one and the ſame cloſe or parcel of land, and not other or different, and that the hedge and fence hereinafter mentioned to be out of repair, and the hedge and fence in the ſaid award mentioned and directed to be made by the ſaid William Norton in right of his ſaid wife, between the ſaid allotment of him the ſaid William Norton and the ſaid allotment of the ſaid Elizabeth Fallowfield now are, and at the ſaid time when, &c. were the ſame hedges and fences, and not other or different, to wit, at the pariſh aforeſaid: And the ſaid Richard further ſays, that he the ſaid Richard before and at the ſaid time when, &c. was law-

fully

fully poſſeſſed of and in the ſaid cloſe called Metty Moor Cloſe, otherwiſe Moorfield Cloſe, lying contiguous and next adjoining to the ſaid cloſe now in the poſſeſſion of the ſaid William Norton, ſo lying contiguous and adjoining to the ſaid cloſe in which, &c.: And the ſaid Richard further ſaith, that he the ſaid Richard, being ſo poſſeſſed of the ſaid cloſe called Metty Moor Cloſe, otherwiſe Moorfield Cloſe, the ſaid cattle of the ſaid Richard, a little before the ſaid time when, &c. were in the ſaid cloſe called Metty Moor Cloſe, otherwiſe Moorfield Cloſe; and becauſe the hedge and fence between the ſaid cloſe called Metty Moor Cloſe, otherwiſe Moorfield Cloſe, and the ſaid cloſe now in the poſſeſſion of the ſaid William Norton before and at the ſaid time when, &c. were not ſufficiently repaired, and were out of repair; and becauſe before and at the ſaid time when, &c. there was not any ſufficient hedge or fence between the ſaid cloſe now in the poſſeſſion of the ſaid William Norton, and the ſaid cloſe in which, &c. ſo as to prevent cattle from time to time being in the ſaid cloſe called Metty Moor Cloſe, otherwiſe Moorfield Cloſe, from ſtraying and leaping thereout into the ſaid cloſe or parcel of land, now in the poſſeſſion of the ſaid William Norton from thence into the ſaid cloſe in which, &c. and doing damage there to the ſaid cattle of the ſaid Richard ſo being in the ſaid cloſe called Metty Moor Cloſe, otherwiſe Moorfield Cloſe as aforeſaid, a little before the ſaid time when, &c. ſtrayed and eſcaped from thence into the ſaid cloſe or parcel of land now in the poſſeſſion of the ſaid William Norton, and from thence into the ſaid cloſe in which, &c. through default and for want of ſuch hedges and fences as aforeſaid, and on that occaſion were in the ſaid cloſe in which, &c. eating up the graſs of the ſaid Peter there then lying, growing, and being, and doing damage there until the ſaid Peter, of his own wrong, at the ſaid time when, &c. took the ſaid cattle in the ſaid declaration mentioned in the ſaid cloſe in which, &c. and them unjuſtly detained againſt ſureties and pledges until, &c. as the ſaid Richard hath above thereof complained againſt him; and this he is ready to verify; wherefore inaſmuch as the ſaid plaintiff hath above thereof acknowledged the taking of the ſaid cattle in the ſaid cloſe in which, &c. he the ſaid Richard prays judgment and his damages, by occaſion of the taking and unjuſtly detaining of the ſaid cattle, to be adjudged to him.

AVOWRIES AND COGNIZANCES (WITH PLEAS, &c. IN BAR TO.) BY COMMONERS. DAMAGE FEASANT.

ASHMAN *againſt* GRENHILL AND ANOTHER. } SOMERSETSHIRE, to wit. Declaration in replevin by Robert Aſhman againſt Benjamin Greenhill and William Moor, for taking one mare and one gelding in Kilmerſdon Common, &c. Declaration replevin for taking a mare.

And

owry and nizance, a- wing taking tle damage ant *in locus in* parcel of a mmon in the nor of A. t which a- ant claims a mmon of paf- in right of opyhold mef- e and land nted by the to the a- vant and twe ers for their s and the life ſurvivor, for commonable tle levant and chant on ta.d ffuage and d.

And the ſaid Benjamin and William, by their attorney, come and defend the wrong and injury, when, &c.; and the ſaid William in his own right, and the ſaid Benjamin as his bailiff, well acknowledges the taking of the ſaid cattle in the ſaid place in which, &c. and juſtly, &c.; becauſe they ſay, that long before the ſaid time when, &c. to wit, on the eighteenth of October 1739, one Thomas Caum, eſquire, and Thomas Fane, eſquire, were ſeiſed in their demeſne as of fee of and in the manor of Kilmerſdon, in the ſaid county, of which ſaid manor the ſaid place called Kilmerſdon, in which, &c. in the ſaid declaration mentioned, now is, and at the ſaid time when, &c. was, and from time whereof, &c. hath been part and parcel, within which ſaid manor whereof, &c. there now are, and at the ſaid time, when, &c. were, and from time whereof, &c. there hath been divers cuſtomary tenements, part and parcel of the ſaid manor, and demiſed and demiſeable by copy of the court rolls of the ſaid manor, by the lord or lords of the ſaid manor for the time being, or his or their ſtewards of the court of the ſaid manor for the time being, to any perſon or perſons willing to take the ſame for the term of three lives or otherwiſe, at the will of the lord or lords of the ſaid manor, according to the cuſtom of the ſaid manor: And the ſaid defendants further ſay, that within the ſaid manor whereof, &c. there now is, and at the ſaid time when, &c. there was, and from time whereof, &c. hath been a certain ancient and laudable cuſtom there uſed and approved of within the ſaid manor; that is to ſay, that all and every the cuſtomary tenants of the ſaid cuſtomary tenements, with the appurtenances for the time being reſpectively, have had, and have uſed, and been accuſtomed to have and uſe, and of right ought to have had and uſed, and ſtill of right ought to have and uſe for himſelf and themſelves, his and their farmers and tenants, occupiers of the ſaid cuſtomary tenements reſpectively, with the appurtenances, common of paſture in, upon, and throughout the ſaid place in which, &c. called K. Common in the ſaid declaration mentioned, for all his, her, or their commonable cattle, levant and couchant in and upon the ſaid cuſtomary tenements, with the appurtenances, in each and every year at all times of the year, at his, her, or their free will or pleaſure, as belonging and applying to the ſaid cuſtomary tenements, with the appurtenances, parcel, &c.: And the ſaid Benjamin and the ſaid William further ſay, that the ſaid William Carn and Thomas Fane being ſo ſeiſed in their demeſne as of fee of and in the ſaid manor of K. with the appurtenances as aforeſaid, they the ſaid William Carn and Thomas Fane long before the ſaid time when, &c. to wit, at a court baron and cuſtomary court of the ſaid William Carn and Thomas Fane, heretofore holden in and for the ſaid manor on the ſaid eighteenth of October 1739, by and before Thomas Evans, then their ſteward of the court of the ſaid manor, by the copy of the rolls of the court of the ſaid manor granted to the ſaid William, one Mary Moor and Palmer Dovy, a certain meſſuage and ſeventy-ſeven acres of land, with the appurtenances, the ſame being one of the ſaid cuſtomary tenements, to have and to hold the ſame, with the

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appurtenances, unto the ſaid William, Mary Moor, and P. Dovy, for the term of their lives, and the life of the longeſt liver of them ſucceſſively, according to the cuſtom of the manor aforeſaid, after the determination of the eſtate and intereſt which one Anne Moor, widow, then had of and in the ſaid meſſuage and ſeventy-ſeven acres of land, with the appurtenances, for and during her widowhood only, at the will of the lord, according to the cuſtom of the ſaid manor; by virtue of which ſaid grant the ſaid William, Mary Moor, and Palmer Dovy afterwards and long before the ſaid time when, &c. became and were ſeiſed of the reverſion of and in the ſaid meſſuage and ſeventy-ſeven acres of land, with the appurtenances expectant upon the determination of the ſaid eſtate and intereſt of the ſaid Ann Moor in the ſaid meſſuage and ſeventy-ſeven acres of land for her widowhood only, at the will of the lord, according to the cuſtom of the ſaid manor: And the ſaid Benjamin and William further ſay, that the ſaid Anne Moor being ſo ſeiſed of and in the ſaid meſſuage and ſeventy-ſeven acres of land, with the appurtenances as aforeſaid, and the ſaid Anne Moor being and continuing a widow, and the ſaid William, Mary Moor, and Palmer Dovy being ſo ſeiſed of the reverſion as aforeſaid, ſhe the ſaid Mary Moor afterwards, and in the lifetime of the ſaid Ann Moor, and long before the ſaid time when, &c. to wit, on the twenty-firſt of September 1756, at K. aforeſaid, in the ſaid county, died, and the ſaid William and Palmer Dovy ſurvived her the ſaid Mary, and thereupon the ſaid William and P. Dovy became and were ſeiſed of the reverſion of and in the ſaid meſſuage and ſeventy-ſeven acres of land, with the appurtenances expectant upon the determination of the ſaid eſtate and intereſt of the ſaid Anne Moor in the ſaid meſſuage and ſeventy-ſeven acres of land, with the appurtenances as aforeſaid, by ſurvivorſhip; and the ſaid Anne Moor being ſo ſeiſed of and in the ſaid meſſuage and ſeventy-ſeven acres of land, with the appurtenances as aforeſaid, and the ſaid Anne being and continuing a widow, and the ſaid William and P. D. being ſo ſeiſed of the reverſion as aforeſaid by ſurvivorſhip as aforeſaid, ſhe the ſaid Anne Moor afterwards, and long before the ſaid time when, &c. to wit, on the fourth of January 1764, at K. aforeſaid, in the ſaid county, died, and the ſaid William and P. D. ſurvived her, after whoſe deceaſe they the ſaid William and P. D. entered into and upon the ſaid meſſuages and ſeventy-ſeven acres of land, with the appurtenances, and became and were ſeiſed in their demeſne as of freehold for and during the natural lives of them the ſaid William and P. D. at the will of the lord, according to the cuſtom of the ſaid manor; and the ſaid William and P. D. ſo being ſeiſed thereof as aforeſaid, he the ſaid P. D. afterwards, and long before the ſaid time when, &c. to wit, on the nineteenth of February 1778, at K. aforeſaid, died, after whoſe death the ſaid William afterwards, and long before the ſaid time when, &c. to wit, on the ſame day and year laſt aforeſaid, became and was, and ſtill is ſeiſed of and in the ſaid meſſuage and ſeventy-ſeven acres of land, with the appurtenances in his demeſne as of freehold, for and during the natural life of him the ſaid

William by ſurvivorſhip, having ſurvived the ſaid Mary Moof and P. D. both deceaſed as aforeſaid, at the will of the lord, according to the cuſtom of the ſaid manor; and the ſaid William being ſo ſeiſed of the ſaid meſſuage and ſeventy-ſeven acres of land, with the appurtenances as aforeſaid, becauſe the ſaid cattle in the ſaid declaration mentioned, at the ſaid time when, &c. were wrongfully in the ſaid place called K. C. in which, &c. eating and depaſturing upon the graſs there then growing, and doing damage there, ſo that the ſaid William could not have and enjoy the ſaid common of paſture in the ſaid place in which, &c. parcel, &c. in as ample and beneficial a manner as he the ſaid William was entitled unto, and then and there of right ought to have had and enjoyed the ſame, he the ſaid W. in his own right well avows, and the ſaid Benjamin, as his bailiff, well acknowledges the taking of the ſaid cattle in the ſaid declaration mentioned, at the ſaid time when, &c. in the ſaid place called K. C. in which, &c. and juſtly, &c. for and in the name of a diſtreſs for the ſaid damage ſo there done and doing; and this, &c.; wherefore, &c.

S. LAWRENCE.

Plea in bar, *de injuria* and traverſe of common of paſture; 2d, leave and licence from the bailiff; 3d, *de injuria*, and traverſes the grant from the lord; 4th, leave and licence of one W. A. who claims an unlimited common of paſture in *locis* in right of a copyhold tenement demiſed to him by the lord.

(Plea to the avowry and cognizance, &c. *de injuria ſua*, and traverſe of the cuſtom for common of paſture, &c.:(And for further plea in bar by leave, &c.; becauſe he ſays, that the ſaid Robert, a little before the ſaid time when, &c. by the licence and conſent of the ſaid Benjamin firſt in that behalf by the ſaid Benjamin given and granted to the ſaid Robert at K. aforeſaid, put the ſaid cattle in the ſaid declaration mentioned, in the ſaid place in which, &c. to feed and depaſture on the graſs there then growing; which ſaid cattle, at the ſaid time when, &c. were in the ſaid place in which, &c. on the occaſion aforeſaid depaſturing the graſs there growing until the ſaid William and Benjamin at the ſaid time when, &c. took the ſaid cattle in the ſaid declaration mentioned, and unjuſtly detained the ſame againſt ſureties and pledges until, &c. as the ſaid Robert hath above complained againſt them; and this, &c.; wherefore, &c.: And for further plea, by leave, &c.; becauſe he ſays, *de injuria*, &c.; without this, that the ſaid William Caum and Thomas Fane granted to the ſaid William, Mary Moor, and P. Dovy, the ſaid meſſuage and ſeventy-ſeven acres of land, with the appurtenances, in manner and form as the ſaid William and Benjamin have above in their ſaid avowry and cognizance alledged; and this, &c.; wherefore, &c.: And for further plea, &c. by leave, &c.; becauſe he ſays, that long before the ſaid time when, &c. to wit, on the twenty-firſt of October 1765, one Robert Twyford, clerk, was ſeiſed in his demeſne as of fee of and in the ſaid manor of K. in the ſaid county, of which ſaid manor the ſaid place called K. C. in which, &c. in the ſaid declaration mentioned, now is, and at the ſaid time when, &c. was, and from time immemorial hath been part and parcel, within which ſaid manor whereof, &c. there now are, and at the ſaid time when, &c. were, and from time whereof, &c. there now have been di-

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vers cuſtomary tenements, part and parcel o the ſaid manor, and demiſed and demiſeable by copy of the court rolls of the ſaid manor, by the lord or lords of the ſaid manor for the time being, or by his or their ſteward of the ſaid court of the ſaid manor for the time being to any perſon or perſons willing to take the ſame for the term of three lives or otherwiſe, at the will of the lord, according to the cuſtom of the ſaid manor: And the ſaid Robert further ſays, that within the ſaid manor whereof, &c. there now is, and at the ſaid time when, &c. and from time whereof, &c. there hath been a certain ancient and laudable cuſtom there uſed and approved of within the ſaid manor, *i. e.* that all and every the cuſtomary tenements of the ſaid laſt-mentioned cuſtomary tenements, with the appurtenances, for the time being reſpectively, have had and have uſed, and been accuſtomed to have and uſe for himſelf and themſelves, his and their farmers and tenants, occupiers of the ſaid laſt-mentioned cuſtomary tenements reſpectively, with the appurtenances, common of paſture in, upon, and throughout the ſaid place called K. C. in the ſaid declaration mentioned, for all manner of commonable cattle in each and every year, at all times of the year, at his and their free will and pleaſure, as belonging and applying to the ſaid laſt-mentioned cuſtomary tenants, with the appurtenances, parcel, &c. [Grant from Twyford of premiſes to one William Aſhman.] [Entry of William Aſhman]: and the ſaid William Aſhman being ſo ſeiſed of the ſaid laſt-mentioned ten acres of paſture, tenement, or dwelling-houſe, with the appurteuances as laſt aforeſaid, he the ſaid Robert, a little before the ſaid time when, &c. by order and permiſſion of the ſaid William Aſhman, put the ſaid cattle in the ſaid declaration mentioned in the ſaid place in which, &c. to feed and depaſture on the graſs there then growing; which ſaid cattle, at the ſaid time when, &c. were in the ſaid place in which, &c. on the occaſion aforeſaid, depaſturing the graſs there then growing until, &c.; and this, &c.; wherefore, &c. V. GIBBS.

Replication to firſt plea; iſſue on traverſe; general demurrer to ſecond plea; replication to third plea; iſſue on traverſe; general demurrer to fourth plea. S. LAWRENCE.

Replication, fue on the fi and third ple demurrer to ſecond fourth.

I Think the ſecond plea bad, inaſmuch as plaintiff ſtates he puts his cattle in by licence of defendant Greenhill, whereas a bailiff cannot licence a ſtranger to put cattle on his maſter's own land without his expreſs order, much leſs licence a ſtranger to put his cattle on the common to the injury of the other commoners. I think the fourth plea objectionable throughout: the plaintiff there ſtates a cuſtom for copyholders to com non, and derives a copyhold eſtate to hi brother. He ſtates the cuſtom to be, to h mon for all commonable cattl on the common, and does not aſcertain the extor meaſure of the common by ſaying levant and couchant; and I take it the cuſtom can never extend to all commonable cattle of copyholders without limit. He alſo ſtates, that he put his cattle in by the order and permiſſion of his brother William Aſhman, and a copyholder cannot licence a ſtranger to common. I have, therefore, for the above reaſons demurred to the ſecond and laſt pleas, and taken iſſues on the other.

G. CROMPTON.

After this plaintiff amended his ſecond plea, and ſtruck out his laſt, but the cauſe then was compromiſed by plaintiff's paying defendants their full coſts, &c.

MIDDLESEX,

Declaration in Trevin for taking sheep.

MIDDLESEX, to wit. Thomas Chandler, William Chaſeley, and Henry Woodman, were ſummoned to anſwer Matthew Stone, of a plea wherefore they took the cattle of the ſaid Matthew and unjuſtly detained them againſt ſureties, &c. and whereupon the ſaid Matthew, by George Clarke, his attorney, complains; for that the ſaid defendants, upon the firſt of April 1786, at the pariſh of Hayes, otherwiſe Heeſe, in the ſaid county of Middleſex, in a certain place there called Betwell Common, otherwiſe Betwell Green, otherwiſe Betwell Heath, took the cattle, that is to ſay, eighty-two ſheep of the ſaid Matthew, of the price of one hundred pounds, and unjuſtly detained them againſt ſureties and pledges until, &c.; wherefore the ſaid Matthew ſays he is injured, and hath ſuſtained damage to the value of twenty pounds; and therefore, &c.

Avowry and cognizance, *locus in quo* a waſte within the manor of H.; a meſſuage and land, parcel of the ſaid manor, demiſeable; a demiſe of the meſſuage and land from the lord of the manor to E. B. who entered and is ſeiſed; E. B. demiſed by indenture, and with the conſent of the lord, to one of the defendants for 21 years; a cuſtom forevery tenant of the meſſuage and land upon granting a heath-rent of ſixpence and ſive common of paſture over the waſte for twenty ſheep, or two kine, or two aſſes, and paying the heath-rent of three-pence for ten ſheep, one horſe or one kine; that defendant paid the heath-rent of ſixpence, and becauſe plaintiff's ſheep were damage feaſant there, *per quod* he could not enjoy, &c. well avows,

And the ſaid defendants, by John Cooke, their attorney, come and defend the wrong and injury, when, &c. and the ſaid Thomas in his own right well avows, and the ſaid William and Henry, as bailiffs of the ſaid Thomas, well acknowledge the taking of the ſaid cattle in the ſaid declaration mentioned, in the ſaid place in which, &c. and juſtly, &c.; becauſe they ſay, that the ſaid place in which, &c. now is, and from time immemorial hath been, a certain waſte or common, lying and being within, and parcel of the manor of Heeſe, otherwiſe Hayes, in the pariſh aforeſaid, in the county aforeſaid: And the ſaid defendants further ſay, that a certain meſſuage, and divers, to wit, fifty acres of land, with the appurtenances, lying and being at Betwell, in the pariſh aforeſaid, in the county aforeſaid, now are, and from time whereof the memory of man is not to the contrary have been, a cuſtomary tenement, lying and being within, and parcel of the manor of Heeſe, otherwiſe Hayes, demiſed and demiſeable by the lord of the manor, or his ſteward of the courts of the ſaid manor for the time being, by copy of the court roll of the ſaid manor, to any perſon or perſons willing to take the ſame in fee ſimple, or otherwiſe, at the will of the lord, according to the cuſtom of the ſaid manor: And the ſaid defendants further ſay, that long before the ſaid time when, &c. to wit, on the thirteenth of January 1777, at a court of George John Coomes, eſquire, then being lord of the ſaid manor, holden at the pariſh aforeſaid, in the county aforeſaid, within and for the ſaid manor of Heeſe, otherwiſe Hayes, before James Garth, gentleman, then ſteward of the court of the ſaid manor, he the ſaid G. J. Cook then being lord of the ſaid manor, did, by copy of the court-rolls of the ſaid manor, grant to one Eliſha Biſcoe, eſquire, then aforeſaid cuſtomary renement, with the appurtenances, to hold the ſame to the ſaid E. Biſcoe and his heirs, at the will of the lord, according to the cuſtom of the ſaid manor, by virtue whereof the ſaid E. B. aforeſaid, and before the ſaid time when, &c. to wit, on the ſame day and year aforeſaid, at the pariſh aforeſaid, entered into the ſaid cuſtomary tene-

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ment, with the appurtenances, and became, and was, and from thence hitherto hath been, and ſtill is, ſeiſed thereof in his demeſne as of fee, at the will of the lord, according to the cuſtom of the ſaid manor; and the ſaid E. B. being ſo ſeiſed of the ſaid cuſtomary tenements, with the appurtenances, as aforeſaid, he the ſaid E. B. afterwards, and before the ſaid time when, &c. to wit, on the twenty-eighth of June 1730, at the Pariſh aforeſaid, by a certain indenture then there made between the ſaid E. B. and the ſaid Thomas Cone, part of which ſaid indenture, ſealed with the ſeal of the ſaid E. B. the ſaid defendants now bring here into court, the date whereof is the ſame day and year aforeſaid, he the ſaid E. B. by and with the conſent of Francis Aſchough, eſquire, then being lord of the ſaid manor, demiſed the ſaid cuſtomary tenements, with the appurtenances, to the ſaid Thomas, to hold the ſame to the ſaid Thomas from Michaelmas then laſt paſt, for the ſpace of twenty-one years thence next enſuing, by virtue of which ſaid demiſe the ſaid Thomas afterwards, and before the ſaid time when, &c. to wit, on the twenty-third of June 1780, at the pariſh aforeſaid, entered into the aforeſaid cuſtomary tenement, with the appurtenances, and became, and was, and at the ſaid time when, &c. continued thereof poſſeſſed +: And the ſaid defendants further ſay, that there now is, and at the ſaid time when, &c. there was, and from time immemorial there hath been, a certain ancient and laudable cuſtom uſed and approved of within the ſaid manor, that is to ſay, that every tenant and holder of the aforeſaid cuſtomary tenement, with the appurtenances, paying heath rent, in manner hereafter mentioned, have, had, and have been uſed, and accuſtomed to have, and of right ought to have had, and ſtill of right ought to have common of paſture in and upon the ſaid place in which, &c. in manner following, that is to ſay, every tenant and landholder, paying a heath rent of ſixpence *per annum* to the lord of the ſaid mannor, hath had common of paſture thereon for twenty ſheep, or two horſes, or two cows, in lieu thereof, and every ſuch tenant, paying a heath rent of threepence *per annum* to the lord of the ſaid manor, hath had common of paſture thereon for ten ſheep, or one horſe, or one cow, in lieu thereof, as to the ſaid cuſtomary tenement, with the appurtenances, belonging and appertaining: And the ſaid defendants in fact ſay, that the ſaid Thomas being ſo poſſeſſed of the aforeſaid cuſtomary tenement, with the appurtenances, and ſuch landholders as aforeſaid, he the ſaid Tho. before, and at the ſaid time when, &c. was a heath renter aforeſaid and paid a heath rent of ſixpence *per annum* to the ſaid Francis Aſchough, then and there being lord of the ſaid manor, for and in reſpect of the aforeſaid cuſtomary tenement, with the appurtenances; and becauſe the ſaid cattle in the ſaid declaration mentioned at the ſaid time when, &c. were in the ſaid place in which, &c. depaſturing on the graſs there then growing, and doing damage there to the ſaid Thomas, ſo that he the ſaid Thomas could not have and enjoy the aforeſaid common of paſture there in ſo large and ample a manner as he then and there ought to have

enjoyed the ſame, he the ſaid Thomas in his own right well avows, and the ſaid William and Henry, as his bailiffs, well acknowledge the taking the cattle in the ſaid place in which, &c. and juſtly, &c. as and for a diſtreſs for the ſaid damage ſo by them there done, and doing, &c.: And for a further avowry in this behalf, &c. [ſame as firſt avowry to +]: And the ſaid defendants further ſay, that there now is, and at the ſaid time when, &c. was, and from time immemorial there hath been, a certain ancient and laudable cuſtom uſed and approved of within the ſaid manor, that is to ſay, that the homage of the court baron of the ſaid manor, for the time being, charged and ſworn at the ſaid court baron, from time whereof the memory of man is not to the contrary, have made, and have uſed, and been accuſtomed to make, and of right ought to have made, and ſtill of right ought to make bye-laws, or orders, for the government and regulation of the commonable places within the ſaid manor, and for the preſervation of the herbage thereof; and the ſaid defendants further ſay, that at the court baron of Roger Jenyns, eſquire, then lord of the ſaid manor, holden at Heeſe, otherwiſe Hayes aforeſaid, within and for the ſaid manor, on the twenty-ſixth of April 1693, before Samuel Corbett, gentleman, then ſteward of the ſame court, Richard Rice, Thomas Elphic, Matthew Ruſſel, Richard Holes, John Turner, Matthew Colburne, John Ply, Thomas Talbot, and Henry Turner, then tenants of the ſaid manor, and then and there being ſworn on the homage in the ſame court, did then and there order that every landholder or tenant, who paid ſixpence *per annum* for heath rent, ſhould have liberty to keep and depaſture upon all or any of the common heaths and common fields and places thereunto adjoining and belonging, twenty ſheep, and no more, and that every ſuch landholder and tenant, who paid threepence for heath rent, ſhould in like manner keep ten ſheep, and no more; and that every ſuch landholder or tenant, having or keeping no ſheep, ſhould have leave to keep and depaſture upon the ſaid lands and premiſes, two horſes or two cows inſtead of the ſaid number of twenty ſheep, or one horſe or one cow inſtead of ten ſheep, in like manner: And the ſaid defendants in fact ſay, that the ſaid Thomas being ſo poſſeſſed of the ſaid laſt-mentioned cuſtomary tenement, with the appurtenances, he the ſaid Thomas before, and at the ſaid time when, &c. was a heath renter, and paid a heath rent of ſixpence *per annum* to the ſaid F. Aſchough, eſquire, then and there being lord of the ſaid manor, for and in reſpect of his ſaid laſt-mentioned cuſtomary tenement, with the appurtenances; and becauſe the ſaid cattle in the ſaid declaration mentioned, at the ſaid time when, &c. were in the ſaid place in which, &c. depaſturing on the graſs there then growing, and doing damage, ſo that he the ſaid Thomas could not have, uſe, or enjoy his ſaid laſt-mentioned common of paſture there in ſo large and ample a manner as he then and there ought to have uſed and enjoyed the ſame, he the ſaid Thomas in his own right well avows, and the ſaid W. and H. as his bailiffs, acknowledge the taking of

Avowry, a from within manor for homage of court baron make bye for regu- the com- that ho- make a law, regu- the com- as ſtated firſt avowry, becauſe,

of the ſaid cattle in the ſaid place in which, &c. and juſtly, &c. as and for a diſtreſs for the ſaid damages ſo there done and doing, &c.

W. MANLEY.

And the ſaid Matthew ſays, that by reaſon of any thing alledged in the ſaid ſeveral avowries and cognizances above made, or either of them, neither the ſaid Thomas ought to avow, nor the ſaid W. and H. to acknowledge the taking of the ſaid ſheep in the ſaid place in which, &c. to be juſt; becauſe he ſays, that true it is that the ſaid place in which, &c. now is, and at the ſaid time when, &c. was, and from time whereof the memory of man is not to the contrary hath been parcel of the manor of Heeſe, otherwiſe Hayes, in the pariſh aforeſaid, in the county aforeſaid, as the ſaid defendants have above alledged; but that the ſaid Matthew further ſays, that one William Burton Raynes, long before the ſaid time when, &c. was, and yet is, ſeiſed in his demeſne as of fee of and in divers, to wit, forty acres of arable land, with the appurtenances, ſituate, lying, and being in the pariſh aforeſaid, in the ſaid county, near unto the ſaid place in which, &c. and the ſaid W. B. R. and all thoſe whoſe eſtates he ſo had, and now hath of and in the ſaid land, with the appurtenances, from time whereof, &c. have had and have uſed, and been accuſtomed to have, and of right ought to have had, and ſtill of right ought to have, for himſelf and themſelves, his and their tenants and farmers of the ſaid land, with the appurtenances, for the time being, common of paſture in the ſaid place in which, &c. for all his and their commonable ſheep levant and couchant in and upon the ſaid land, with the appurtenances, every year and at all times of the year, at his and their free will and pleaſure, as to the ſaid land with the appurtenances, belonging and appertaining; and being ſo ſeiſed thereof, he the ſaid W. B. R. before the ſaid time when, &c. to wit, on the twenty-fifth of March 1785, at, &c. demiſed the ſaid land, with the appurtenances, to the ſaid Matthew, to have and to hold the ſame to him the ſaid Matthew for the term of one whole year from thence next enſuing, and fully to be complete and ended, and ſo from year to year, for ſo long time as it ſhould pleaſe the ſaid W. B. R. and the ſaid Matthew; by virtue of which ſaid demiſe the ſaid Matthew afterwards, and before the ſaid time when, &c. to wit, on, &c. entered into the ſaid demiſed premiſes, with the appurtenances, and became, and at the ſaid time when, &c. was, and ſtill is, poſſeſſed thereof; and the ſaid Matthew being ſo poſſeſſed thereof, long before the ſaid time when, &c. to wit, on the ſaid firſt of April 1786, put the ſaid ſheep in the ſaid declaration mentioned, being his own commonable ſheep levant and couchant, in and upon the ſaid land, with the appurtenances, ſo demiſed as aforeſaid, into and upon the ſaid place in which, &c. to depaſture the graſs there then growing, and to uſe his ſaid common of paſture there as it was lawful for him to do, and the ſaid ſheep were in the ſaid place in which, &c. depaſturing

Plea in bar admits *locus* to be, &c. but ſays that one W. ſeiſed of ſix acres of in the pariſh near *locus*; preſcription for common of paſture over *locus* ſheep; a demiſe from W. B. plaintiff, which plaintiff put in his ſtead until defendant *de injuria*, &c.

ing upon the graſs there then growing, uſing the ſaid common of paſture there until the ſaid defendants of their own wrong, at the ſaid time when, &c. took the ſaid ſheep of him the ſaid Matthew, and unjuſtly detained the ſame againſt ſureties and pledges until and in manner and form as the ſaid Matthew hath above complained againſt them; and this, &c.; wherefore, &c.: [2d Plea in bar ſame as firſt, except claiming common of paſture for three dry ſheep for every two acres, and one lamb for every one acre of the ſaid land, inſtead of for commonable ſheep. 3d Plea in bar ſame as firſt, claiming under Amey Ann Caſy and Mary Caſy in right of twenty-eight acres of land. 4th Plea in bar ſame as ſecond, claiming under Amey Ann Caſy and Mary Caſy, in right of the ſaid twenty-eight acres of land. 5th and 6th Pleas ſame as firſt and ſecond, claiming under Michael Granger in right of twenty two acres of land.]

W. BALDWIN.

Replication, ſupporting avowry and traverſe of plaintiff's right of common.

And the ſaid defendants, as to the ſaid plea of the ſaid Matthew by him firſt above pleaded in bar to the ſaid ſeveral avowries and cognizances above made, as before, ſay, that the ſaid ſheep in the ſaid declaration mentioned at the ſaid time when, &c. were wrongfully in the ſaid place in which, &c. eating up and depaſturing the graſs there growing, and doing damage, as they have in the ſaid avowries and cognizances above alledged, without this, &c. [traverſe of right to common of paſture]; and this, &c.; wherefore, &c. [Replications traverſe the rights to common of paſture in all the pleas.]

W. MANLEY.

Rejoinder.

Rejoinder, iſſues on all the traverſes.

This cauſe was tried at the ſittings after Trinity term 1783, before lord Kenyon, chief juſtice, and verdict for defendants.

Declaration for taking cattle.

ROGERS *againſt* GIBBONS. } SHROPSHIRE; to wit. John Gibbons was ſummoned to anſwer Edward Rogers, &c. for taking one yearling heifer, at the pariſh of St. Martins, in the county of Salop, in a certain place there called Coe Croch.

Avowry, damage feaſant.

In bar, that *locus in quo* lies within ſuch a common; that tenants of the *locus in quo* ought to repair the fence between the *locus* and common; that Duncannon was ſeiſed of a meſſuage; preſcription for common of paſture over *locus* for all cattle at all times of the year; demiſe of the meſſuage, &c. to plaintiff; that plaintiff put his cattle on the common, and becauſe fence out of repair cattle eſcaped, &c.

And the ſaid Edward, as to the ſaid avowry of the ſaid John, by him above made, ſays, that the ſaid J.. by reaſon of any thing

therein

therein alledged, ought not to avow the taking of the ſaid cattle in the ſaid place in which, &c. to be juſt; becauſe he ſays, that the ſaid place in which, &c. now is, and from time whereof the memory of man is not to the contrary, hath lain contiguous and next adjoining to a certain common or waſte, ſituate, lying, and being in the ſaid pariſh of St. Martins, in the ſaid county of Salop, called Glynn Morlas, otherwiſe Glynn Morlas Common, and that the ſaid J. and all others the tenants and occupiers of the ſaid cloſe, in which, &c. for the time being, from time whereof, &c. hitherto of right ought to have maintained and repaired, and until the neglect hereinafter mentioned, have been uſed and accuſtomed to maintain and repair, and the ſaid J. ſtill of right ought to maintain and repair the fence between the ſaid cloſe in which, &c. and the ſaid common or waſte called Glynn Morlas, otherwiſe Glynn Morlas Common, when and as often as occaſion hath required, and ſhould require, to prevent the eſcape of cattle out of the ſaid common or waſte, called, &c. into the ſaid cloſe in which, &c.: And the ſaid E. further ſays, that Arthur Hill Trevor, eſquire, commonly called lord Viſcount Duncannon of the kingdom of Ireland, long before the ſaid time when, &c. and at the time of making the demiſe hereinafter mentioned, was, and ſtill is ſeiſed of and in a certain meſſuage and divers lands and tenements, with the appurtenances, ſituate and being in the pariſh of St. Martins, in the ſaid county of Salop, called the Rhyan, in his demeſne as of fee, and that the ſaid Lord Viſcount Duncannon, and all others whoſe eſtate he ſo had and hath of and in the ſaid meſſuage, lands, and tenements, with appurtenances, from time whereof, &c. have had and have uſed, and been accuſtomed to have, and of right ought to have, and the ſaid lord viſcount Duncannon ſtill of right ought to have, for himſelf and themſelves, his and their tenants and farmers, occupiers of the ſaid meſſuages, lands, and tenements, with the appurtenances, for the time being, common of paſture in and over the ſaid common or waſte, called, &c. in the pariſh, &c. for all his and their commonable cattle levant and couchant, in and upon the ſaid meſſuage, lands, and tenements, with the appurtenances, every year at all times of the year, at his or their free will and pleaſure, as belonging and appertaining to the ſaid meſſuages, lands, and tenements, with the appurtenances; and being ſo ſeiſed thereof, he the ſaid Arthur Hill Trevor, lord viſcount Duncannon, long before the ſaid time when, &c. to wit, on the firſt of May 1783, at the pariſh, &c. demiſed the ſaid meſſuages, lands, and tenements, with the appurtenances, to the ſaid E. to have and to hold the ſame unto the ſaid E. from thenceforth for and during, and unto the full end and term of one year from thence next enſuing, and fully to be complete and ended, and ſo from year to year for ſo long as the ſaid lord viſcount Duncannon and E. ſhould pleaſe; by virtue of which ſaid demiſe he the ſaid E. afterwards, and before the ſaid time when, &c. to wit, on the firſt of May 1784, entered into the ſaid demiſed premiſes, with the appurtenances, and became and at the ſaid time, when, &c. was and ſtill is, poſſeſſed thereof; and

being ſo poſſeſſed thereof, he the ſaid E. afterwards, and before the ſaid time when, &c. that is to ſay, on the twenty-firſt of July 1784, put his ſaid cattle in the ſaid declaration mentioned, then being his own commonable cattle and levant and couchant, in and upon the ſaid meſſuage, lands, and premiſes, with the appurtenances, ſo demiſed to him as aforeſaid, into the ſaid common or waſte, called, &c. to depaſture the graſs there then growing, and to uſe his ſaid common of paſture there, as it was lawful for him to do for the cauſe aforeſaid, and the ſaid cattle remained there for the cauſe aforeſaid, until the eſcape thereof hereinafter mentioned, and becauſe the ſaid fence between the ſaid common or waſte, called, &c. and the ſaid cloſe of the ſaid J. called, &c. in which, &c. was ruinous, broken down, inſufficient, and in decay, for want of neceſſary repairing and amending thereof the ſaid cattle of the ſaid E. in the ſaid declaration mentioned, a little before the time when, &c. eſcaped out of the ſaid common or waſte, called, &c. into the ſaid cloſe in which, &c. through the defect of that fence, and were there for the cauſe aforeſaid, until the ſaid J. of his own wrong, at the ſaid time, when, &c. took the ſaid cattle in the ſaid declaration mentioned, there and then unjuſtly detained againſt gages and pledges until, &c. and in manner and form as the ſaid E. hath above thereof complained againſt him; and this, &c.; wherefore ſince the ſaid J. hath above acknowledged the taking of the ſaid cattle in the ſaid declaration mentioned, in the ſaid place in which, &c. the ſaid E. prays judgment and his damages by the taking and unjuſtly detaining of the ſaid cattle in the ſaid declaration mentioned to be adjudged to him, &c.: And for further plea in bar in this behalf, the ſaid E. by leave, &c. ſays, that he the ſaid J. by reaſon of any thing by him in his ſaid avowry above alledged, ought not to avow the taking of the ſaid cattle in the ſaid place in which, &c. to be juſt, &c.; becauſe he ſays, that the ſaid place in which, &c. now is, and from time whereof, &c. hath lain contiguous and next adjoining to a certain cloſe or piece of land, ſituate, lying, and being in the pariſh of St. Martins, in the ſaid county of Salop, called Glynn Morlas, otherwiſe Glynn Morlas Common, and that the ſaid J. and all other the tenants and occupiers of the ſaid cloſe, now of the ſaid J. in which, &c. for the time being, from time whereof, &c. hitherto of right ought to have maintained and repaired, and until the neglect thereof hereinafter next mentioned, have been uſed and accuſtomed to maintain and repair, and the ſaid J. of right out to maintain and repair the fence between the ſaid cloſe of the ſaid J. in which, &c. and the ſaid cloſe or piece of land, called, &c. when and as often as occaſion hath required, to prevent the eſcape of cattle out of the ſaid cloſe or piece of land, called, &c. into the ſaid cloſe in which, &c.: And the ſaid E. further ſays, that the ſaid A. H. Trevor, eſquire, commonly called lord viſcount Duncannon of the kingdom of Ireland, long before the ſaid time when, &c. was, and ſtill is lawfully poſſeſſed of and in the ſaid cloſe or piece of land, called, &c.; and being ſo poſſeſſed thereof he the ſaid lord viſcount Duncannon, ſtate before the ſaid time when, &c. to wit, on the twenty-firſt

Plea in bar, adjoins called G. that te- of locus to repair, lord D. of the and gave to plain- put in his and be- &c.

of July 1784, at, &c. gave leave and licence to the ſaid E. to feed and depaſture his ſaid cattle in the ſaid cloſe or piece of land, called, &c. wherefore he the ſaid E. a little before the ſaid time when, &c. to wit, on the ſame, &c. put and turned his ſaid cattle into the ſaid cloſe or piece of land, called, &c. to feed on and depaſture the graſs there then growing, and being as it was lawful for him to do for the cauſe aforeſaid, and the ſame remained there for the cauſe aforeſaid by the licence of the ſaid lord viſcount Duncannon until the eſcape thereof hereinafter mentioned; and becauſe the ſaid fence, &c. [as before, &c. &c.]: and this, &c.; wherefore, &c.

Replication, that the ſaid fence before the ſaid time when, &c. was in good repair, and that the plaintiff a little before the ſaid time when, &c. pulled it down.

And the ſaid John ſays, that he, by reaſon of any thing by the ſaid Edward in his ſaid plea by him firſt above pleaded in bar to the ſaid avowry of the ſaid J. by him above made, ought not to be barred from avowing the taking of the ſaid cattle in the ſaid place in which, &c. to be juſt; becauſe he ſays, that the ſaid fence between the ſaid cloſe in which, &c and the ſaid common or waſte, called, &c. mentioned to be maintained and repaired by the ſaid J. and all other the tenants and occupiers of the ſaid place in which, &c. before the ſaid time when, &c. was in good and ſufficient repair, and that he the ſaid E. a little before the ſaid time when, &c. wilfully, wrongfully, and injuriouſly broke down, felled down, proſtrated and deſtroyed, and cauſed and procured to be broke down, felled down, proſtrated, and deſtroyed the ſaid fence of the ſaid cloſe in which, &c. in divers parts and places thereof, by reaſon of which ſaid fence of the ſaid cloſe in which, &c. being ſo broke down, felled down, proſtrated, and deſtroyed, and cauſed and procured to be broke down, felled down, proſtrated, and deſtroyed by the ſaid E. as aforeſaid, the ſaid cattle of the ſaid E. ſo put into the ſaid common or waſte, called, &c. to feed and depaſture on the graſs there growing, as in the ſaid plea firſt above pleaded mentioned, erred and eſcaped from and out of the ſaid common through the ſaid parts and places in the ſaid fence ſo wilfully, wrongfully, and injuriouſly broke down, felled down, proſtrated, and deſtroyed as aforeſaid, unto and into the ſaid place in which, &c. and were thereby, and through the ſaid E.'s own wrong and injury, doing damage to the ſaid J. until the ſaid J. took the ſaid cattle for and in the manner of a diſtreſs for the ſaid damage ſo done and doing there, as in his ſaid avowry is mentioned, and detained them until the ſame cattle, at the complaint of the ſaid E. were replevied, as it was lawful for him the ſaid J. to do; and this, &c.; wherefore as before he prays judgment and a return of the ſaid heifer, together with his damages, coſts, and charges, according to the form of the ſtatute in ſuch caſe made and provided, to be adjudged to him, &c.: And the ſaid J. ſays, that he, by reaſon, &c. and becauſe proteſting, that the ſaid lord viſcount Duncannon did not give leave and licence to him the ſaid E. to feed and depaſture the ſaid cattle in the ſaid cloſe or piece of land, called, &c. in manner and form as the ſaid E. hath above in

pleading alledged; for plea nevertheleſs in this behalf he the ſaid J. ſays, [ſame replication as to the firſt plea in bar].

Drawn by MR. CROMPTON.

Hilary Term, 27. Geo. III.

In bar, *locus in quo* contiguous common, which was parted from common by fence and ditch; that reſidue of the *locus in quo* have been time immemorially to keep up a fence of a proper height, and to ſcour the ditch; that the plaintiff was poſſeſſed of a meſſuage and land whereof he preſcribes for common of paſture on the ſaid common for all commonable beaſts levant and couchant, &c. and being ſo ſeiſed, the plaintiff put the ſaid mare and gelding on the common to depaſture; and becauſe the ſaid ditch was not of proper height, and alſo becauſe the ſaid ditch was not kept up, the ſaid mare ſtrayed out of the common into the *locus in quo*.

AND the ſaid George, as to the ſaid avowry of the ſaid William by him above made, ſays, that by reaſon of any thing in the ſaid avowry above alledged, the ſaid William ought not to avow the taking of the ſaid gelding and mare in the ſaid declaration mentioned, in the ſaid place in which, &c. to be juſt; becauſe he ſays, that the ſaid place in which, &c. called the Higher Monkey Leaze, at the ſaid time when, &c. lay, and from time whereof the memory of man is not to the contrary, hath lain contiguous and next adjoining on one ſide thereof to a certain moor, waſte, or common, called Common Moor, part of which ſaid place in which, &c. called the Higher Monkey Leaze, on the ſide thereof, adjoining the ſaid moor, waſte, or common, called Common Moor, hath, during all the time aforeſaid, been ſeparated and divided from the ſaid moor, common, or waſte, by a certain ſtile and rails, and the reſidue of the ſaid place in which, &c. called the Higher Monkey Leaze, on the ſide thereof adjoining the ſaid moor, waſte, or common, hath, during all the time aforeſaid, been ſeparated or divided from the ſaid moor, waſte, or common by a certain ditch or rhine between the ſame, and which ſaid ſtile, and rails, and ditch or rhine, during all the time aforeſaid, have been the only fence between the ſaid moor, waſte, or common, called Common Moor, and the ſaid place in which, &c. called the Higher Monkey Leaze: And the ſaid George further ſays, that the tenants and occupiers of the ſaid place in which, &c. called the Higher Monkey Leaze, for the time being, from time whereof the memory of man is not to the contrary, have repaired and amended, kept up, and made of proper and ſufficient height the ſaid ſtile and rails, and have ſcoured and cleanſed the ſaid ditch or rhine, and have kept up and repaired the banks and ſides of the ſaid ditch or rhine, and have been, and uſed, and accuſtomed, and of right ought to repair, amend, keep up, and make of proper and ſufficient height the ſaid ſtile and rails, and to ſcour and cleanſe the ſaid ditch or rhine, and to keep up and repair the banks and ſides of the ſaid ditch or rhine between the ſaid place in which, &c. called the Higher Monkey Leaze, and the ſaid moor, common, or waſte, called Common Moor, as often as occaſion required, to prevent the eſcape of cattle depaſturing and feeding on the ſaid moor, waſte, or common into the ſaid place in which, &c. called Higher Monkey Leaze: And the ſaid George further ſays, that he the ſaid George, long before and at the ſaid time when, &c. was, and ſtill is ſeiſed in his demeſne as of fee of and in a certain meſſuage or dwelling-houſe, and three quarters of an acre of land, with the appurtenances, ſituate, lying, and being within the borough of L. in the ſaid county, and that he the ſaid George

and

and all thoſe whoſe eſtate he now hath, and at the ſaid time when, &c. had of and in the ſaid meſſuage or dwelling-houſe and land, with the appurtenances, from time whereof the memory of man is not the contrary, have had and have uſed, and have been accuſtomed to have, and of right ought to have, for themſelves, their farmers and tenants, occupiers of the ſaid meſſuage or dwelling-houſe and land, with the appurtenances, common of paſture in and upon the ſaid moor, waſte, or common, called Common Moor, for all his and their commonable mares and geldings levant and couchant in and upon the aforeſaid meſſuage and land, with the appurtenances, every year, at all times of the year, at his and their free will and pleaſure, as to the ſaid meſſuage or dwelling-houſe and land, with the appurtenances, belonging and appertaining; and being ſo ſeiſed of the ſaid meſſuage or dwelling-houſe and land, with the appurtenances, as aforeſaid, he the ſaid George, a little before the ſaid time when, &c. put the ſaid gelding and mare in the ſaid declaration mentioned, the ſame being his own gelding and mare and levant and couchant, in and upon his ſaid meſſuage and land, with the appurtenances, into the ſaid moor, waſte, or common, called the Common Moor, to depaſture the graſs there then growing, and to uſe his ſaid common of paſture there as it was lawful for him to do for the cauſe aforeſaid; and becauſe the ſaid ſtile and rails at the ſaid time when, &c. were ruinous, in decay, low, and not made of proper and ſufficient height, and becauſe the ſaid ditch or rhine at the ſaid time when, &c. was choaked and filled up for want of ſcouring and cleanſing thereof, and the banks and ſides thereof were proſtrate, fallen down, ruinous and in decay for want of keeping up and repairing the ſame, the ſaid gelding and mare of the ſaid George in the ſaid declaration mentioned, ſo being in the ſaid common, waſte, or moor, called Common Moor, and uſing his ſaid common there, eſcaped from and out of the ſaid common, waſte, or moor, called Common Moor, into the ſaid place in which, &c. called Higher Monkey Leaze, for want of a ſufficient fence, by reaſon that the ſaid gate, ſtile, and rails, were ruinous, in decay, low, and not of proper and ſufficient height, and that the ſaid ditch or rhine was choaked up, filled up, and the ſaid banks and ſides thereof were ſo proſtrate, fallen down, ruinous, and in decay as aforeſaid, and were on that occaſion in the ſaid place in which, &c. called the Higher Monkey Leaze, until the ſaid William of his own wrong, and at the ſaid time when, &c. and before the ſaid George had notice of the ſaid eſcape, took the ſaid mare and gelding of him the ſaid George in the ſaid declaration mentioned there, and unjuſtly detained the ſame againſt ſureties and pledges until, &c. as the ſaid George hath above in his ſaid declaration alledged; and this he the ſaid George is ready to verify; wherefore ſince the ſaid William hath avowed the taking of the ſaid mare and gelding of the ſaid George, in which, &c. the ſaid George prays judgment and his damages by reaſon of the taking and unjuſtly detaining thereof to be adjudged to him, &c. [2d Plea in bar

ſimilar

ſimilar to the firſt, with this difference only, that it ſtates that the *locus in quo* was divided from the common by a ditch or rhine and gate, which defendant was obliged to repair.]

V. GIBBS.

...ication to ...laſt plea in ...proteſting ...plaintiff is ...ſeſed of the ...meſſuage ...laid; for ...cation, that ...cattle were ...wrongfully in ...locus in quo; ...verſe of the ...right of com-...mon.

And the ſaid William, as to the ſaid plea of the ſaid George firſt above pleaded in bar to the ſaid avowry of the ſaid William, ſaith, that he by any thing by the ſaid George in that plea alledged, ought not to be barred from avowing the taking of the ſaid gelding and mare in the ſaid declaration mentioned, in the ſaid place in which &c. to be juſt; becauſe proteſting that the ſaid George was not ſeiſed in his demeſne as of fee of and in a certain meſſuage or dwelling-houſe and three quarters of an acre of land, with the appurtenances, ſituate, lying, and being within the borough of L. in the ſaid county, in manner and form as in and by the ſaid plea of the ſaid George firſt above pleaded in bar to the ſaid avowry of the ſaid William is above alledged; nevertheleſs for replication in this behalf the ſaid William ſaith, that the ſaid cattle at the ſaid time when, &c. were wrongfully in the ſaid place, in which, &c. feeding on the graſs there then growing, and doing damage to the ſaid William, in manner and form as the ſaid William hath in his ſaid avowry above alledged; without this, that he the ſaid George, and all thoſe whoſe eſtates he now hath, and at the ſaid time when, &c. had, of and in the ſaid meſſuage or dwelling-houſe and land laſt-mentioned, with the appurtenances, from time whereof, &c. have had and have uſed, and have been accuſtomed to have, and of right ought to have, for themſelves, their farmers and tenants, occupiers of the ſaid meſſuage or dwelling-houſe and land, with the appurtenances, laſt-mentioned, common of paſture in and upon the ſaid waſte, moor, or common, called Common Moor, for all his or their commonable mares and geldings levant and couchant, in and upon the ſaid meſſuage and land laſt-mentioned, with the appurtenances, every year, at all times of the year, at his and their free will and pleaſure, as to the ſaid meſſuage or dwelling-houſe and land laſt-mentioned, with the appurtenances, belonging and appertaining, in manner and form as the ſaid George hath in his ſaid firſt plea in bar above alledged; and this, &c.; wherefore, as before, he prays, &c. [The 2d replication to the ſecond plea in bar ſame as firſt replication, making it conformable to the ſecond plea bar.]

J. MORGAN.

...der, iſſue ...raverſe.

And the ſaid George, as to the ſaid plea of the ſaid William by him above pleaded in reply to the plea of the ſaid George by him firſt above pleaded in bar to the ſaid avowry of the ſaid William by him above made, as before ſays, that the ſaid George, and all thoſe whoſe eſtate he now hath, and at the ſaid time when, &c. had, of and in the ſaid meſſuage or dwelling-houſe and land, with the

the appurtenances, from time whereof, &c. have uſed, and have been uſed and accuſtomed to have and uſe, for themſelves, their farmers and tenants, occupiers of the ſaid meſſuage or dwelling-houſe and land, with the appurtenances laſt-mentioned, common of paſture in and upon the ſaid waſte, moor, or common, called Common Moor, for all his and their commonable mares and geldings levant and couchant in and upon the aforeſaid meſſuage and land laſt-mentioned, with the appurtenances, every year, at all times of the year, at his and their free will and pleaſure, as to the ſaid meſſuage or dwelling-houſe and land laſt mentioned, with the appurtenances thereto belonging and appertaining, in manner and form as the ſaid George hath in and by his ſaid plea firſt above pleaded in bar in that behalf alledged; and this he the ſaid George prays may be enquired of by the country, and the ſaid William doth the like.

V. GIBBS.

Second rejoinder ſame as firſt; therefore, &c.

This cauſe was tried at the Summer aſſizes 1787, and a verdict was obtained by plaintiff.

CAMBRIDGESHIRE, to wit. James Jepps, late of Barrington, in the county of Cambridge, miller, and John Rayner, of the ſame place, yeoman, were ſummoned to anſwer Richard Rendyſke, eſquire, &c. for taking thirty-three ſheep and twenty-ſeven lambs at Barrington aforeſaid, in a certain place there called the *Middle Field*, &c. &c. and the ſaid defendants by their attorney come and defend the force and injury when, &c. and well avow the taking of the ſaid ſheep and lambs in the ſaid declaration mentioned, in the ſaid place in which, &c. and juſtly, &c. becauſe they ſay that there now are, and at the ſaid time when, &c. were, and from time whereof the memory of man is not to the contrary have been divers, to wit, three manors within the pariſh of Barrington, in the ſaid county of Cambridge, extending throughout the ſame and co-extenſive therewith, and that the ſaid place in which, &c. now is, and at the ſaid time when, &c. was, and from time whereof the memory of man is not to the contrary hath been part and parcel of a certain large open field, containing divers, to wit, three hundred acres of land, and containing the land of divers and different freeholders and tenants within the ſaid reſpective manors and pariſh, and parcel thereof, and which ſaid lands have from time immemorial lain diſperſed in the ſaid open field, not ſeparated or divided from each other: And the ſaid defendants further ſay, that the maſter, fellows, and ſcholars of Trinity College, in the univerſity of Cambridge, now are, and at the ſaid times when, &c. and at the ſeveral times hereinafter mentioned were ſeiſed in right of the ſaid college of and in the ſaid three manors, with the appurtenances whereof, &c. in their demeſne as of fee, and that the ſaid maſter, fellows, and

Declaration taking, &c.

Avowing [illegible] maſter, fellows, &c. of Trinity College, Cambridge, [illegible] different [illegible] and a court [illegible] ſets out particularly [illegible] tom of [illegible] of parcel cording to [illegible] courſe [illegible] lage, and [illegible] tom for [illegible] to appoint [illegible] reeve, [illegible] make [illegible] reſpecting [illegible] commons, [illegible] puſing [illegible] on the [illegible]

and ſcholars, and all thoſe whoſe eſtate they now have, and at the ſaid times when, &c. had of and in the ſaid three manors, with the appurtenances thereof, &c. from time whereof the memory of man is not to the contrary, have had and held, and have been uſed and accuſtomed to have and hold, and during all the time aforeſaid of right ought to have and hold, and ſtill of right ought to have and hold, one court leet or view of frankpledge of all the reſiants and inhabitants of the ſaid three manors, with one court baron within any of the ſaid three manors, at all times when and ſo often as occaſion hath required, to be held before the ſteward of the ſaid court for the time being for all the ſaid manors: And the ſaid defendants further ſay, that by the courſe and method of tillage and huſbandry uſed in the ſaid manors and pariſh from time whereof, &c. the ſaid open field whereof, &c. has during all the time aforeſaid been, and at the ſaid time when, &c. ought to have been, and ſtill ought to be divided into three ſhifts, and tilled in ſuch a manner as that one of the ſaid ſhifts ſhould be ſown yearly and every year with wheat, rye, and barley, commonly called the firſt crop, or winter corn, which ſaid ſhift, after the corn and grain grown thereon has been cut and carried away, as during all the time aforeſaid hath been and is called the Haum Field, and that one other of the ſaid ſhifts called the Brotue Field ſhould be ſown yearly and every year with barley, oats, peaſe, and beans, commonly called the ſummer corn, and that the remaining one of the ſaid three ſhifts ſhould yearly and every year be fallow: And the ſaid defendants further ſay, that within the ſaid pariſh and manors there now is, and from time whereof, &c. there hath been a certain ancient and laudable cuſtom there uſed and approved of in the ſaid pariſh and manors, amongſt the tenants and occupiers of the ſaid open fields whereof, &c. for the time being, from time whereof, &c. have had and have uſed, and have been uſed and accuſtomed to have and uſe, and of right ought to have had and uſed, and ſtill of right ought to have and uſe common of paſture in and throughout the ſaid open field whereof, &c. (his own land in the ſame field only excepted) for his corn and cattle, in and according to certain ſhifts and proportions, in manner and form following, that is to ſay, that from and after all the corn and grain have been cut down, taken, and carried away for the cows and great cattle, that is to ſay, horſes, mares, geldings, and oxen, in and over the ſaid ſhift called the Broke Field, parcel, &c. and in and over the ſtubbles thereof, from and immediately after the corn and grain, and every part thereof have been ſo cut down, taken, and carried away, until Michaelmas day according to the old ſtyle, and then, to wit, on Michaelmas day according to the old ſtyle, for the ſaid cows and great cattle in and over the ſaid ſhift called the Haum Field, being the ſtubble field of the firſt crop or winter corn, parcel, &c. together with the ſaid Broke Field, until the twelfth day of November, being Holimas-day, according to the old ſtyle, then next following, and then, that is to ſay, at Michaelmas-day, old

ſtyle,

ſtyle, for the ſheep, together with the ſaid cows and great cattle in and over the ſaid ſhift, called the Broke Field, parcel, &c. and in and over the ſtubbles thereof, from Michaelmas-day, according to the old ſtyle, until the twenty-third day of October, and then, to wit, on the twenty-third day of October, for the ſaid ſheep, together with the ſaid cows and great cattle in and over the ſaid ſhift called the Haum Field, being the ſtubble field of the firſt crop or winter corn, parcel, &c. together with the ſaid Broke Field, until the twelfth day of November, being Holimas-day according to the old ſtyle: And the ſaid defendants further ſay, that within the ſaid manor there now is, and from time whereof, &c. there hath been a certain other ancient and laudable cuſtom there uſed and approved of within the ſaid manors, that is to ſay, that the jury of the ſaid court leet or view of frankpledge, with the homage of the ſaid court baron held in and for the ſaid manors from time to time, for and during all the time, have been uſed and accuſtomed, at the ſame court leet, or view of frankpledge with the court baron, to appoint certain perſons to be field reeves of the ſaid large and open field, *and to make bye-laws or ordinances, impoſing a reaſonable ſum of money as a penalty upon any perſon or perſons whoſe cattle ſhould from time to time be found feeding, depaſturing, and doing damage on the ſaid ſhifts and ſtubbles, contrary to the ſaid cuſtom in that behalf above-mentioned,* and that the ſaid field reeves from time whereof, &c. have been uſed and accuſtomed to diſtrain, and for all the time aforeſaid ought of right to have diſtrained, and ſtill of right ought to diſtrain ſuch cattle as have from time to time been found depaſturing, feeding, and doing damage on the ſaid ſhifts and ſtubble, contrary to the ſaid cuſtom in that behalf abovementioned, and to impound the ſame in the open and common pound there until the owners thereof have paid the ſum of money as a penalty impoſed by ſuch bye-laws or ordinance, or until the ſaid cattle have been replevied in due form of law: And the ſaid defendants further ſay, that at the court leet or view of frankpledge, with a court baron of them, the ſaid maſter, fellows, and ſcholars, lords of the ſaid manors, holden in and for the ſaid manors on the twenty-third of July 1776, before Andrew Pemberton, then their ſteward of the ſaid court, the ſaid defendants were duly appointed field reeves by the jury of the ſaid court leet and the homage of the ſaid court baron, Owen, Cambridge, &c. [here inſert the names of the jury] good and ſufficient men then being, of the homage of the ſaid court baron, then and there duly impanelled, charged, and ſworn, and the *jury of the ſaid court leet or view of frankpledge, together with the homage of the ſaid court baron, on the ſaid twenty-third of July* 1776, *made a certain bye-law or ordinance, that all the ſheep ſhould be duly kept out of the haum ſtubbles in the ſaid open field until the twenty-third of October each and every year, on pain of ten ſhillings to be paid to the field reeves for every ſuch offence by the owner of ſuch ſheep:* And the ſaid defendants further

further ſay, that the ſaid place in which, &c. at the ſaid time when, &c. was part and parcel of the ſhift of the ſaid open field called the Haum Field, and which had in the year preceding the ſaid time when, &c. been ſown with the firſt crop or winter corn, and which had before the ſaid time when, &c. been reaped, taken, carried away, together with the other corn and grain growing in the ſaid open field whereof, &c. in that year, and and that the ſaid ſheep and lambs in the ſaid declaration mentioned were in the ſaid place in which, &c. parcel, &c. and of the ſaid ſhift called the Haum Field, being the ſtubble field of the firſt crop or winter corn at the ſaid time when, &c. being before the twenty-third day of October 1788, contrary to the ſaid cuſtom in that behalf above-mentioned feeding and doing damage there, *whereby and by force of the ſaid bye-law or ordinance, the ſaid Richard became liable to pay the reeves of the ſaid open field the ſum of ten ſhillings, being the penalty by the ſaid bye-law or ordinance impoſed as aforeſaid*; wherefore they the ſaid defendants, as ſuch field reeves as aforeſaid, well avow the taking of the ſaid ſheep and lambs at the ſaid time when, &c. and juſtly, &c. as and for a diſtreſs for the ſaid ſum of ten ſhillings, the ſame being at the time of the taking the ſame, and from thence hitherto unpaid to the ſaid defendants, and this, &c. wherefore, &c. (Second avowry ſame as firſt, except ſtating the diſtreſs to be for damage feaſant, only omitting the penalty, and therefore omitting the Italics.)

S. LAWRENCE.

In bar. 1ſt, *De injuria ſua*, and traverſe of the maſter, &c. being ſeiſed and holding a court, &c.: 2d, *De injuria ſua*, and traverſe of the cuſtom of common of paſture: 3d. *De injuria jua*, and traverſe of the cuſtom for the jury to appoint field reeves and make bye-laws: 4th. *De injuria ſua*, and traverſe of the field reeve's power to diſtrain, &c.: 5th. Same as firſt plea to firſt avowry: 6th. Same as ſecond to 1ſt avowry: 7th. *De injuria ſua*, and traverſe of right of jury to appoint field reeves, and of their right to diſtrain.

S. LE BLANC.

The replications take iſſue on the ſeveral traverſes, the rejoinders add the *ſimiliter*.

This cauſe was tried at Summer aſſizes 1789, before Gould, J. and a ſpecial jury, when the plaintiff obtained a verdict on the ſecond and ſixth iſſues, and the jury were diſcharged of the other.

and And the ſaid defendants, by their attorney, come and defend (for the wrong and injury when, &c. and the ſaid J. in his own right cattle),

certain meſſuage is parcel of a manor demiſeable by the lord, and that the *locus in quo* is parcel thereof wherein there is a cuſtom that every tenant of a cuſtomary tenement ſhall have common when the *locus in quo* ſhall have been ſown with corn, until it ſhall have been reſown, and cuſtom within the manor that the huſband of every wife being a tenant, ſhould be poſſeſſed of tenement after her death for the term of his natural life; that the ſteward of the manor granted ſame to the wife, and that ſhe died, whereupon one of the defendants became ſeiſed thereof, as and by virtue thereof was entitled to common of paſture while *locus*, was not reſown corn, and becauſe the cattle were there eating the graſs, he well avows, &c. damage feaſant.

well

well avows, and the ſaid T. as bailiff of the ſaid J. well acknowledges the taking of the ſaid cattle in the ſaid place called Eaſt Field, in which, &c. and juſtly, &c. becauſe they ſay that a certain ancient meſſuage, with the appurtenances, ſituate, lying, and being at Eaſington aforeſaid, is, and from time whereof, &c. hath been parcel of the manor of Eaſington Kelnea and Sheffling, in the ſaid county, and a cuſtomary tenement of the ſaid manor, demiſed and demiſable by the lord of the ſaid manor for the time being, by the ſteward of his court for the time being, or his under ſteward thereof for the time being, by the copy of the rolls of the ſaid court of the ſaid manor, to any perſon or perſons willing to take the ſame in fee ſimple or otherwiſe, at the will of the lord, according to the cuſtom of the ſaid manor: And the ſaid defendants further ſay, that the ſaid place called the Eaſt Field, in which, &c. hath been an ancient common field, containing by eſtimation three hundred acres of land, lying and being within the manor aforeſaid, and parcel of the ſaid manor, within which ſaid manor there is, and from time whereof, &c. hath been an ancient cuſtom uſed and approved therein, that is to ſay, that every cuſtomary tenant of the ſaid cuſtomary tenement, with the appurtenances for the time being, from time whereof, &c. have had and uſed, and have uſed and been accuſtomed, and of right ought to have and uſe, common of paſture in the ſaid place called Eaſt Field, in which, &c. for all their commonable cattle levant and couchant on the ſaid cuſtomary tenement, with the appurtenances, every year in which the ſaid place called Eaſt Field, in which, &c. hath been ſown with corn or grain, from the time of reaping, taking, and carrying away ſuch corn or grain growing there in that year, until the ſaid place called Eaſt Field, in which, &c. or ſome part thereof, hath been reſown with corn or grain, as belonging and appertaining to the ſaid cuſtomary tenement, with the appurtenances: And the ſaid defendants further ſay, that within the ſaid manor there is, and from time whereof, &c. there hath been a certain ancient cuſtom uſed and approved of therein, to wit, that the huſband of every wife, being a cuſtomary tenant of any cuſtomary tenement of the ſaid manor, dying ſeiſed in poſſeſſion, in the lifetime of ſuch huſband of any ſuch cuſtomary tenement, parcel of the manor aforeſaid, granted to her by copy of the court rolls of the court of the ſaid manor, in fee ſimple, at the will of the lord, according to the cuſtom of the ſaid manor, having had iſſue born alive by ſuch his ſaid wife, hath had and held, and hath been uſed and accuſtomed to have and hold, ſuch cuſtomary tenements, with the appurtenances ſo granted, whereof his ſaid wife died ſo ſeiſed, for and during the term of his natural life, at the will of the lord, according to the cuſtom of the ſaid manor, as cuſtomary tenants thereof: And the ſaid defendants further ſay, that C. Conſtable, eſquire, being ſeiſed of the ſaid manor, with the appurtenances whereof, &c. in his demeſne as of fee long before the ſaid time when, &c. to wit, at the court of his ſaid manor, holden in and for the ſaid manor on,

&c. by H. W. gentleman, then the ſteward of the court of his ſaid manor, by the copy of the rolls of the ſaid manor, granted the ſaid cuſtomary tenement, with the appurtenances, to E. the then wife of the ſaid J. to have and to hold the ſame to the ſaid E. and her heirs, at the will of the lord, according to the cuſtom of the ſaid manor, by virtue of which ſaid grant, the ſaid J. and E. his then wife, in the right of the ſaid E. entered into the ſaid cuſtomary tenement with the appurtenances, and were ſeiſed thereof in the right of the ſaid Elizabeth in their demeſne as of fee, at the will of the lord, according to the cuſtom of the ſaid manor, and being ſo ſeiſed thereof, they the ſaid J. and E. had iſſue of their bodies one P. D. and afterwards, and long before the ſaid time when, &c. the ſaid E. died ſo ſeiſed of the ſaid cuſtomary tenement, with the appurtenances, to wit, at, &c. upon whoſe death he the ſaid J. by virtue of the ſaid cuſtom of the ſaid manor in that reſpect mentioned, became and was ſeiſed of the ſaid cuſtomary tenement, with the appurtenances, for and during the term of his natural life, at the will of the lord, according to the cuſtom of the ſaid manor, and before and at the ſaid time when, &c. was and ſtill is ſeiſed thereof as cuſtomary tenant thereof: And the ſaid defendants further ſay, that in the year of Our Lord 1737, the ſaid place called E. F. in which, &c. was ſown with corn and grain, and before the ſaid time when, &c. the ſaid corn and grain there growing in that year was reaped, taken, and carried away, and at the ſaid time when, &c. the ſaid place called E. F. in which, &c. or any part thereof, was not reſown with any kind of corn or grain; and becauſe the ſaid cattle in the ſaid declaration mentioned, at the ſaid time when, &c. were eating the graſs there growing in the ſaid place called E. F. in which, &c. and doing damage there, ſo that the ſaid J. could not have and enjoy his ſaid common of paſture therein for his ſaid commonable cattle levant and couchant on his ſaid cuſtomary tenement, with the appurtenances, and depaſturing and uſing his ſaid common of paſture there in ſo ample and beneficial a manner as he before that time was uſed and accuſtomed to have and enjoy the ſame, and then of right ought to have had and enjoyed the ſame, he the ſaid J. in his own right well avows, and the ſaid T. as his bailiff, well acknowledges the taking the ſaid cattle in the ſaid place in which, &c. and juſtly, &c. as a diſtreſs for the ſaid damage, &c. and this, &c. wherefore, &c.

EDW. BOOTLE.

Declaration for taking two oxen and two heifers in E. &c.

CRESWICK *and* TREWBODY. } GLOUCESTER, to wit. And the ſaid defendant, when, &c. and as bailiff of T. Newton, baronet, well acknowledges the taking of the cattle aforeſaid, in the ſaid place in which, &c. and juſtly, &c. becauſe he ſays, that the ſaid cloſe called E. in which the taking

of

of the cattle aforeſaid is ſuppoſed to be, is, and at the ſame time when, &c. and alſo from time immemorial was a great field, containing forty acres of meadow, ſituate within the manor of H. in the pariſh of B. in the county aforeſaid, in which ſaid field very many tenants of the manor aforeſaid have, and for all the time aforeſaid have been accuſtomed and ought to have common of paſture for all their other beaſts and horſe beaſts in and upon their ſeveral reſpective tenements, parcel of the ſame manor levant and couchant, from the firſt Sunday next after the tenth day of Auguſt, called S. day, until the firſt Sunday next after the ſecond day of February, commonly called Candlemas day, yearly and every year, as to their ſeveral and reſpective tenements belonging: And the ſaid defendant further ſays, that within the manor aforeſaid, to wit, at that manor there is, and from time immemorial hath been a certain laudable cuſtom uſed for the preſervation of the graſs and the improvement of the common aforeſaid, in the meadow aforeſaid, that as often as any perſon or perſons, at any time after the mowing and carrying away of the firſt mowing of the graſs in the field aforeſaid, called E. yearly growing, and before the ſaid firſt Sunday next after the ſaid tenth day of Auguſt, commonly called S. day in any year, ſhould put any cattle to feed in the field aforeſaid, the lord of the manor aforeſaid for the time being, from time to time for all the time aforeſaid, hath uſed, been accuſtomed, and ought to take, diſtrain, and impound the cattle ſo being in the field aforeſaid, before the day aforeſaid, and doing damage there, for the damage done in the field aforeſaid: And the ſaid defendant further ſays, that the ſaid plaintiff, after the firſt mowing of the graſs in the field aforeſaid in that year growing, mowed and carried away, and before the ſaid firſt Sunday next after the ſaid tenth day of Auguſt, called S. day, and before the ſaid time when, &c. to wit, the ſaid eighth day of Auguſt, in the thirty-fourth year of the reign of the ſaid lord the now king aboveſaid, put the cattle in the declaration aforeſaid mentioned into the ſaid field called E. whereof the ſaid defendant, as bailiff of the ſaid T. N. then and long before lord of the manor aforeſaid, and ſo thereof ſeiſed as of freehold, by his command at the ſaid time when, &c. for the cauſe aforeſaid, well acknowledges the taking of the cattle aforeſaid, in the ſaid place where, &c. doing damage there, and juſtly, &c. and this, &c. wherefore he prays judgment and a return of the cattle aforeſaid, together with his damages, coſts, and charges by him in this ſuit in this behalf ſuſtained, to be adjudged to him, &c.

Cuſtom of the maner as to the uſage of it.

Breach of the cuſtom.

And the ſaid plaintiff ſays, that the ſaid defendant, for the reaſon before alledged, ought not to acknowledge the taking of the cattle aforeſaid in the ſaid place where, &c. juſt, &c. becauſe protefting that within the ſaid manor of H. there is not, nor from time, &c. hath been any ſuch cuſtom uſed for the preſervation of the graſs, and the improvement of the common in the

Plea, proteſting there is no ſuch cuſtom, that the cloſe is within his own manor.

field aforeſaid, that as often as any perſon or perſons, at any time after the mowing and taking away of the firſt mowing of the graſs in the field aforeſaid called E. yearly growing, and before the ſaid firſt Sunday next after the tenth day of Auguſt in any year, ſhould put any cattle to feed in the field aforeſaid, before the ſaid day, and doing damage there, for the damage done in the field aforeſaid, in manner and form as the ſaid defendant hath above alledged; for plea the ſame plaintiff ſays, that he the ſaid plaintiff, long before the ſaid time when, &c. and alſo at the ſaid time when, &c. was ſeiſed in his demeſne as of fee of and in a certain manor called H. in the pariſh of B. aforeſaid, in the county aforeſaid, within which ſaid manor the ſaid field called E. is, and at the ſaid time when, &c and alſo from time immemorial was, lying and being, and thereof parcel; and that the ſaid defendant of his own wrong, on the ſaid eighth day of Auguſt, in the thirty-fourth year aboveſaid, at W. aforeſaid, in the ſaid place called E. took the cattle aforeſaid, and unjuſtly detained them againſt ſureties and pledges until, &c. in manner and form as the ſame plaintiff above againſt him complains; without this, that the ſaid cloſe called E. is, and for time immemorial was, ſituate within the manor of the ſaid J. N. of H. in manner and form as the ſaid defendant hath above alledged; and this, &c.; wherefore he prays judgment and his damages, by reaſon of the taking and unjuſt detention of the cattle aforeſaid, to be adjudged to him, &c.: And the ſaid defendant, as before, ſays, that the cloſe aforeſaid called E. in which, &c. is, and for time immemorial was ſituate within the manor of the ſaid J. N. of H. in manner and form as the ſaid defendant hath above alledged; and of this he puts himſelf upon the country, and the ſaid plaintiff likewiſe, &c.; therefore the ſheriffs are commanded, &c.

Traverſe.

Iſſue on the traverſe.

Avowry in replevin, for taking a gelding in a place called E. damage feaſant

BAVE *againſt* CRESWICK. AND the ſaid defendant, by, &c. when, &c. and well avows the taking of the gelding aforeſaid, in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that the ſaid place in which, &c. contains, and at the ſaid time when, &c. did contain in itſelf ſeventeen acres of paſture, with the appurtenances, in the ſaid pariſh of B. in the county aforeſaid, which ſaid ſeventeen acres of paſture, with the appurtenances, are, and at the ſaid time when, &c. were, the ſoil and freehold of him the ſaid defendant; and becauſe the gelding aforeſaid, at the ſaid time when, &c. was in the ſaid place in which, &c. eating up the graſs then there growing, and doing damage there, the ſame defendant in his own proper right well avows the taking of the gelding aforeſaid in the ſaid place in which, &c. and juſtly, &c. ſo doing damage there, &c.; and this, &c.; wherefore he prays judgment and a return of the gelding aforeſaid, together with his damages, coſts, and charges in this behalf ſuſtained, according to the form of the ſtatute in ſuch caſe made and provided,

21. Hen. 8. c. 19.

provided, to be adjudged to him, &c.: And the said plaintiff says, that the said defendant, for the reason before alledged, the taking of the gelding aforesaid in the said place in which, &c. ought not to avow to be just; because protesting, that the same place in which, &c. at the said time when, &c. was not the freehold of him the said defendant, as above thereof is supposed; for plea nevertheless the same plaintiff says, that long before the said time of the taking of the gelding aforesaid in the said place in which, &c. as also at the said time when, &c. he the said plaintiff was seised of and in one capital messuage and two hundred acres of land, with the appurtenances, in B. in the county aforesaid, in his demesne as of fee; and that he the said plaintiff, and all those whose estate the same plaintiff then had of and in the said capital messuage and two hundred acres of land, with the appurtenances, at the said time when, &c. and also from time immemorial have had, and for all the time aforesaid have been accustomed and ought to have, common of pasture in the said place in which, &c. for all their horse beasts in and upon their tenements aforesaid levant and couchant, from the first Sunday next after the tenth day of August, commonly called S. Clay, until the first Sunday next after the second day of February, commonly called Candlemas-day, yearly and every year, as to their tenements aforesaid belonging and appertaining; by reason whereof the said plaintiff, after the first Sunday next after the said tenth day of August, and before the first Sunday next after the said second day of February, to wit, on the seventh day of September, in the thirty-fourth year of the reign of the lord the now king aforesaid, the gelding aforesaid, in the declaration aforesaid above specified, then being the proper gelding of him the said plaintiff, upon his tenements aforesaid levant and couchant, into the said place in which, &c. to have his common there, put, as he well might; and the said defendant the said gelding so in the said place in which, &c. put, and feeding on the grass there growing, and using the common of pasture of him the said plaintiff there, afterwards at the said time when, &c. to wit, on the said eighth day of September, in the thirty-fourth year aforesaid, at B. aforesaid, in the said place in which, &c. called P. took, and that gelding unjustly detained against sureties and pledges, in manner and form as the said plaintiff hath above against him complained; and this he is ready to verify; wherefore he prays judgment and his damages, by reason of the taking and unjust detention of the gelding aforesaid, to be adjudged to him, &c.: And the said defend. nt as before says, that the said seventeen acres of pasture, with the appurtenances, are, and at the said time when, &c. were, the soil and freehold of him the said defendant, as he hath above thereof alledged; without that, that the said plaintiff, and all those whose estate he at the said time when, &c. had of and in the said capital messuage and tenements aforesaid, at the said time when, &c. and also from time immemorial have had, and been accustomed to have, common of pasture in the said place in which, &c. for all their horse beasts in and upon their tenements aforesaid, with

Bar to the avowry.

Seisin in fee.

Prescription for common.

Traverse of the custom.

the appurtenances levant and couchant, from the firſt Sunday next after the tenth day of Auguſt until the firſt Sunday next after the ſecond day of February, yearly and every year, as to their tenements aforeſaid belonging and appertaining, as the ſaid plaintiff hath above thereof alledged; and this, &c.; wherefore, as before, he prays judgment and a return of the gelding aforeſaid, together with his damages, coſts, and charges, according to the form of the ſtatute aforeſaid, to be adjudged to him, &c.: And the ſaid plaintiff, as before, ſays, that he and all thoſe whoſe eſtate he at the ſaid time when, &c. had of and in the capital meſſuage and tenements aforeſaid at the ſame time when, &c. and alſo from time immemorial have had, and have been accuſtomed, and ought to have, common of paſture in the ſaid place in which, &c. for all their horſe beaſts in and upon their tenements aforeſaid levant and couchant, from the firſt Sunday next after the tenth day of Auguſt until the firſt Sunday next after the ſecond of February, yearly and every year, as to their tenements aforeſaid belonging and appertaining, in manner and form as, &c.

[illegible] on the tra-[illegible]

[illegible]owry. Da-[illegible]e feaſant by [illegible]ſtomary te-[illegible]

AND the ſaid J. by J. R. his attorney, comes and defends the wrong and injury, when, &c. and well avows the taking of the ſaid cattle in the ſaid place in which, &c. and juſtly; and becauſe he ſays, that the ſaid place in which, &c. containing, and at the ſaid time when, &c. did contain in itſelf four acres of paſture, with the appurtenances, in the pariſh aforeſaid; which ſaid four acres of paſture, with the appurtenances, in which, &c. are, and at the ſaid time when, &c. were, and from time whereof the memory of man is not to the contrary, have been lying within and parcel of the manor of Plumpton, in the ſaid county of Cumberland; within which ſaid manor there are, and for all the time aforeſaid have been divers cuſtomary tenements deſcendible, and which have deſcended from anceſtor to heir, as of the hereditary right of the tenements called tenant right reſpectively held of the lord of the ſaid manor for the time being, as of that his manor, by divers rents and certain ſervices, according to the cuſtom of the ſaid manor; and that long before the ſaid time when, &c. the ſaid Thomas Lazonby was ſeiſed of and in the ſaid four acres of paſture in which, &c. being ſuch cuſtomary tenement as of his cuſtomary hereditary eſtate in form aforeſaid deſcendible and deſcending, according to the cuſtom of the ſaid manor, held of the lord of the ſaid manor as of that his manor aforeſaid, and parcel of his ſaid manor; and becauſe the ſaid cattle, at the ſaid time when, &c. were in the ſaid place in which, &c. depaſturing the graſs therein growing, and doing damage there, the ſaid Thomas well avows the taking of the ſaid cattle in the ſaid place in which, &c. and juſtly, &c. there doing damage, &c.

And

And the ſaid James ſaith, that the ſaid J. Lazonby, by reaſon of any thing above alledged, ought not to avow the taking of the ſaid cattle in the ſaid place in which, &c. to be juſt; becauſe he ſaith, that true it is that the ſaid place in which, &c. contains, and at the ſaid time when, &c. did contain in itſelf four acres of paſture, with the appurtenances, in the pariſh aforeſaid, and that the ſaid four acres of paſture, with the appurtenances, in which, &c. are, and at the ſaid time when, &c. were, and from time whereof the memory of man is not to the contrary, have been lying within and parcel of the ſaid manor of Plumpton, in the county aforeſaid; and that within that manor there are, and for all the time aforeſaid have been divers cuſtomary tenements deſcendible, and which have deſcended from anceſtor to heir, of the hereditary right of the tenements called tenant right reſpectively held of the lord of the ſaid manor for the time being, as of that his manor, by divers rents and certain ſervices, according to the cuſtom of the ſaid manor, as the ſaid Thomas Lazonby has in and by his ſaid avowry in that behalf above alledged; but the ſaid James for plea ſaith, that he the ſaid James, at the ſaid time when, &c. and long before was and ſtill is ſeiſed of and in a certain meſſuage and five acres of land, with the appurtenances, being ſuch cuſtomary tenement in the pariſh aforeſaid within the ſaid manor, as of his cuſtomary eſtate of inheritance in form aforeſaid deſcendible and deſcending, according to the cuſtom of the ſaid manor, and held of the lord of the ſaid manor as of that his manor aforeſaid, and parcel of the ſame manor; and that within the ſaid manor there is, and for all the ſaid time whereof the memory of man is not to the contrary, there hath been a certain cuſtom there uſed and approved, that every ſuch cuſtomary tenant of the ſaid cuſtomary tenements, with the appurtenances, now of the ſaid James, for the time being, hath had, and hath uſed and been accuſtomed to have, and of right ought to have common of paſture in the ſaid place in which, &c. for all his commonable cattle levant and couchant on the ſaid cuſtomary tenement, with the appurtenances, every year at all times of the year, at his will and pleaſure, as belonging to the ſaid cuſtomary tenement, with the appurtenances; wherefore the ſaid James, before the ſaid time when, &c. to wit, on the eleventh of May 1749, put the ſaid oxen and heifer in the ſaid declaration mentioned, being the commonable cattle of the ſaid James, and levant and couchant on his ſaid cuſtomary tenement, with the appurtenances, into the ſaid place in which, &c. to depaſture and feed on the graſs there growing, and to uſe the ſaid common of paſture of the ſaid James there, which ſaid cattle were there on the occaſion aforeſaid until the ſaid J. L at the ſaid time when, &c. of his own wrong there took the ſaid oxen and heifer of the ſaid James, and unjuſtly detained them againſt ſureties and pledges until, &c.; and this, &c.; wherefore ſince, &c.: And the ſaid James, for further plea in bar to the ſaid avowry by leave, &c. ſaith, that the ſaid J. L. by reaſon of any thing above alledged, ought not to avow the taking of the ſaid cattle in the ſaid place in which,

Plea, that plaintiff was customary tenant the ſaid when defendant *de injuria propria.*

2d Plea, a right of way in reſpect of a cuſtomary tenement.

which, &c. to be juſt; becauſe he ſays, that true it is that the ſaid place in which, &c. contains, and at the ſaid time when, &c. did contain in itſelf four acres of paſture, with the appurtenances, in the pariſh aforeſaid; and that the ſaid four acres of paſture, with the appurtenances in which, &c. are, and at the ſaid time when, &c. were, and from time whereof the memory of man is not to the contrary, have been lying within and parcel of the ſaid manor of Plumpton, in the county aforeſaid, as the ſaid Thomas L. by his ſaid avowry in that behalf above alledged; but the ſaid James further ſaith, that he the ſaid James, at the ſaid time when, &c. and long before, was and ſtill is ſeiſed of and in a certain cuſtomary meſſuage, and divers, to wit, five acres of land, with the appurtenances, being ſuch cuſtomary tenement in the pariſh aforeſaid, within the ſaid manor, as of his cuſtomary eſtate of inheritance in form aforeſaid deſcendible and deſcending, according to the cuſtom of the ſaid manor, and held of the lord of the ſaid manor as of that his manor aforeſaid, and parcel of the ſame manor; and that the right honourable Henry lord viſcount Lonſdale, long before the time of taking the ſaid cattle, was and ſtill is ſeiſed in his demeſne as of fee of and in the ſaid manor of Plumpton, with the appurtenances; and that the ſaid lord viſcount Lonſdale, and all thoſe whoſe eſtate he hath, and at the ſaid time when, &c. had of and in the ſaid manor, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, and have uſed, and been accuſtomed to have for their cuſtomary tenants of the ſaid cuſtomary tenement, with the appurtenances of the ſaid James, common of paſture in and upon a certain large tract of waſte land called Lazonby Fell, in the ſaid county of Cumberland, for all their commonable cattle levant and couchant in and upon the ſaid cuſtomary tenement, with the appurtenances, of the ſaid James, every year at all times of the year, as to the ſaid manor of Plumpton, with the appurtenances, belonging and appertaining: And the ſaid James further ſaith, that within the ſaid manor of Plumpton there is, and for all the time whereof the memory of man is not to the contrary, there hath been a certain cuſtom there uſed and approved, that every ſuch cuſtomary tenement, with the appurtenances, now of the ſaid James for the time being, hath had, and hath uſed and been accuſtomed to have, and of right ought to have a certain way from the ſaid cuſtomary tenement of the ſaid James into, through, and over the ſaid place in which, &c. unto the ſaid large tract of land called Lazonby Fell, and ſo back again from the ſaid large tract of land called Lazonby Fell unto the ſaid cuſtomary tenement of the ſaid James, to go, paſs, and repaſs with their cattle levant and couchant in and upon the ſaid cuſtomary tenement, with the appurtenances, of the ſaid James, for the uſe and enjoyment of the ſaid common of paſture in Lazonby Fell aforeſaid at all times at their will and pleaſure: And the ſaid James further ſaith, that he ſaid James being ſo ſeiſed of and in his cuſtomary tenement, with the appurtenances,

tenances, as of his cuſtomary hereditary eſtate in form aforeſaid deſcendible and deſcending, according to the cuſtom of the ſaid manor held of the lord of the ſaid manor as of that his manor aforeſaid, and parcel of his ſaid manor, he the ſaid James, at the ſaid time when, &c. drove his ſaid oxen and heifer in the ſaid declaration mentioned from his ſaid cuſtomary tenement, being his own commonable cattle levant and couchant thereon, unto and into the ſaid place in which, &c. in the ſaid way there towards the aforeſaid large tract of land called Lazonby Fell, uſing the ſaid way there in the ſaid place in which, &c. as it was lawful for him to do; and the ſaid oxen and heifer in the ſaid declaration mentioned, at the ſaid time when, &c. were in the ſaid place in which, &c. paſſing in and along the ſaid way there, until the ſaid Thomas of his own wrong, at the ſaid time when, &c. there took the ſaid oxen and heifer of the ſaid James, and unjuſtly detained them againſt ſureties and pledges until, &c. and this, &c.; wherefore ſince, &c.

Replication the firſt plea traverſe plaintiff's right in reſpect of cuſtomary tenement.

And the ſaid J. L. as to the ſaid plea of the ſaid J. H. firſt above pleaded in bar to the ſaid avowry of the ſaid J. L. ſaith, that the ſaid cattle, at the ſaid time when, &c. of the wrong and injury of the ſaid J. H. were in the ſaid place in which, &c. depaſturing the graſs therein growing, and doing damage there as the ſaid J. L. hath above alledged; without this, that within the ſaid manor there is, and for all the ſaid time whereof the memory of man is not to the contrary, there hath been a certain cuſtom there uſed and approved, that every ſuch cuſtomary tenant of the ſaid cuſtomary tenement, with the appurtenances, now of the ſaid James for the time being, hath had, and hath uſed, and been accuſtomed to have, and of right ought to have common of paſture in the ſaid place in which, &c. for all his commonable cattle levant and couchant on the ſaid cuſtomary tenement, with the appurtenances, every year at all times of the year at his will and pleaſure, as belonging to the ſaid cuſtomary tenement with the appurtenances, as the ſaid James hath above in his ſaid plea in bar to the ſaid avowry of the ſaid J. L. alledged; and of this he puts himſelf upon the country, &c.: And as to the *ſaid plea of the ſaid J. H. ſecondly above pleaded in bar* to the ſaid avowry of the ſaid J. L. he the ſaid J. L. ſaith, that true it is that the right honourable lord viſcount Lonſdale, long before the ſaid time when, &c. was, and ſtill is ſeiſed in his demeſne as of fee of and in the ſaid manor of Plumpton, with the appurtenances, and that the ſaid lord viſcount Lonſdale, and all thoſe whoſe eſtate he hath, and at the ſaid time when, &c. had of and in his ſaid manor, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, and have uſed, and been accuſtomed to have for their cuſtomary tenants of the ſaid cuſtomary tenements, with the appurtenances, of the ſaid James, common of paſture in and upon the ſaid large tract of waſte land called Lazonby Fell, in the ſaid county of Cumberland, for all their com-

commonable cattle levant and couchant in and upon the ſaid cuſtomary tenement, with the appurtenances of the ſaid James, every year at all times of the year, as to his ſaid manor of Plumpton, with the appurtenances belonging and appertaining, and that within the ſaid manor of Plumpton there is, and for all the ſaid time whereof the memory of man is not to the contrary, there hath been a certain cuſtom there uſed and approved, that every ſuch cuſtomary tenant of the ſaid cuſtomary tenement, with the appurtenances, now of the ſaid James for the time being, hath had, and hath uſed, and been accuſtomed to have, and of right ought to have a certain way from the ſaid cuſtomary tenement of the ſaid James into, through, and over the ſaid place in which, &c. unto the ſaid large tract of land called Lazonby Fell, and ſo back again from the ſaid large tract of land called Lazonby Fell unto the ſaid cuſtomary tenement of the ſaid James, to go, paſs, and repaſs with their cattle levant and couchant in and upon the ſaid cuſtomary tenement, with the appurtenances, of the ſaid James, for the uſe and enjoyment of the ſaid common of paſture in Lazonby Fell aforeſaid, at all times at their will and pleaſure, as the ſaid J. H. hath above in pleading alledged:

The 2d, that cattle were of the way.

But the ſaid J. L. further ſaith, that the ſaid oxen and heifer at the ſaid time when, &c. of the wrong and injury of the ſaid J. H. were in the ſaid place in which, &c. out of the ſaid way, and at a great diſtance, to wit, one hundred yards diſtance from the ſaid way, depaſturing on the graſs of the ſaid J. L. there then growing, and doing damage there to the ſaid J. L. out of the ſaid way in the ſaid place in which, &c.; and being ſo depaſtured on the graſs there then growing, and doing damage to the ſaid L. out of the ſaid way in the ſaid place in which, &c. he the ſaid J. L. at the ſaid time when, &c. took the ſaid cattle in the ſaid place in which, &c. ſo doing damage out of the ſaid way, in manner and form as the ſaid J. L. hath above in his avowry alledged; without this, that the ſaid oxen and heifer, at the ſaid time when, &c. were paſſing in and along the ſaid way, as the ſaid J. H. hath above in his ſaid plea in bar alledged; and this, &c.; wherefore, &c.

Iſſue upon that traverſe, and verdict for plaintiff on both.

Cognizance damage feaſant the ſoil of

AND the ſaid J. P. and T. by R. B. their attorney, come and defend the wrong and injury, when, &c. and as bailiffs of M. A. eſquire, well acknowledge the taking of the ſaid cattle in the ſaid place called R. M. in which, &c. and juſtly, &c.; becauſe they ſay, that the ſaid place called R. M. containeth, and at the time of taking, &c. did contain eight hundred acres of land, and that part, to wit, two hundred and ſeventy acres thereof lies, and at the ſaid time of making, &c. lay in the townſhip of B. in the pariſh aforeſaid; which ſaid two hundred and ſeventy acres, lying in the townſhip of B. parcel, &c. are, and at the ſaid time when, &c.

were,

were, the ſoil and freehold of the ſaid M.; and becauſe the ſaid cattle at the ſaid time when, &c. were in the ſaid two hundred and ſeventy acres of land, lying within the townſhip of B. parcel, &c. eating the graſs there growing, and doing damage there, the ſaid J. P. and T. as bailiffs of the ſaid M. well acknowledge the taking of the ſaid cattle in the ſaid two hundred and ſeventy acres of land, lying in the ſaid townſhip of B. parcel, &c. and juſtly, &c. there doing damage.

E. BOOTLE.

Plea, a right of common in reſpect of a freehold.

And the ſaid John ſays, that by reaſon of any thing above alledged the ſaid J. P. and T. as bailiffs of the ſaid M. ought not to acknowledge the taking of the ſaid cattle in the ſaid place in which, &c. to be juſt; becauſe he ſays, that he the ſaid John long before the ſaid time when, &c. was and yet is ſeiſed in his demeſne as of fee of and in a certain meſſuage and divers, to wit, five acres of land, with the appurtenances, ſituate, lying, and being in the townſhip of S. in the county aforeſaid, near unto the ſaid place in which, &c. and that the ſaid John, and all thoſe whoſe eſtate he hath, and at the ſaid time when, &c. had, of and in the ſaid meſſuage and tenement, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, and have uſed, and been accuſtomed to have, common of paſture as well in the ſaid two hundred and ſeventy acres of land lying in the townſhip of B. parcel, &c. as in the reſidue of the ſaid place called R. M. in which, &c. for all his and their commonable cattle levant and couchant in and upon the ſaid meſſuage and tenement, with the appurtenances, every year at all times of the year, at his and their will and pleaſure, as to the ſaid meſſuage and tenement, with the appurtenances, belonging and appertaining; and the ſaid John being ſo ſeiſed of the ſaid meſſuage and tenement, with the appurtenances, he the ſaid John, at the ſaid time when, &c. put the ſaid cattle in the ſaid declaration mentioned, then being the proper commonable cattle of him the ſaid John levant and couchant in and upon his ſaid meſſuage and tenement, with the appurtenances, in and upon the ſaid place called R. M. whereof the ſaid two hundred and ſeventy acres of land in which, &c. then was, and yet is parcel, to uſe his common of paſture there, which ſaid cattle, for the cauſe aforeſaid, at the ſaid time when, &c. were in the ſaid two hundred and ſeventy acres of land, parcel, &c. eating and feeding upon the graſs there growing, and uſing the ſaid common of paſture of the ſaid John there until the ſaid J. P. and T. at the ſaid time when, &c. of their own wrong, took the ſaid cattle there, and unjuſtly detained the ſame againſt ſureties and pledges until, &c. as the ſaid John by his ſaid declaration above complains againſt them; and this he is ready, &c.; wherefore inaſmuch as the ſaid J. P. and T. have above acknowledged the taking of the ſaid cattle in the ſaid two hundred and ſeventy acres of ground, parcel, &c. the ſaid John prays judgment and that his damages, by reaſon of the taking and unjuſtly detaining thereof, may be adjudged

ea, a right common by in of vicinage in reſpect freehold.

judged to him: And the ſaid John, by leave, &c. further ſaith, that for the reaſon above alledged by the ſaid J. P. and T. they the ſaid J. P. and T. ought not to acknowledge the taking of the ſaid cattle in the ſaid place in which, &c. to be juſt; becauſe the ſaid John ſaith, that another part of R. M, aforeſaid, to wit, five hundred acres, parcel thereof lies, and at the ſaid time when, &c. and alſo from time whereof the memory of man is not to the contrary, lay in the townſhip of S. aforeſaid, and that the ſaid five hundred acres, parcel, &c. lying in the ſaid townſhip of S. at the ſaid time when, &c. and alſo from time whereof the memory of man is not to the contrary, lay contiguous and next adjoining to the ſaid two hundred and ſeventy acres, parcel, &c. in which, &c. not divided or ſeparated therefrom by any hedge, incloſure, fence, or other diviſion whatſoever, to prevent cattle depaſturing in the ſaid part of R. M. aforeſaid lying within the ſaid townſhip of S. into the ſaid part of R. M. aforeſaid lying in the ſaid townſhip of B. in which, &c. and that the ſaid John, long before the ſaid time when, &c. and alſo at the ſaid time when, &c. was and yet is ſeiſed in his demeſne as of fee of and in a certain other meſſuage and other five acres of land, with the appurtenances, ſituate, lying, and being in the ſaid townſhip of S. in the ſaid county of York, and that the ſaid John, and all thoſe whoſe eſtate he now hath, and at the ſaid time when, &c. had, of and in the ſaid laſt-mentioned meſſuage and tenement, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and uſed, and have been accuſtomed to have common of paſture in the ſaid part of R. M. aforeſaid, lying in the ſaid townſhip of S. for all his and their commonable cattle levant and couchant in and upon the ſaid mentioned meſſuage and tenement, with the appurtenances, every year at all times of the year, at his and their will and pleaſure, as to the ſaid laſt-mentioned meſſuage and tenement, with the appurtenances, belonging and appertaining, and that the ſaid John, and all thoſe whoſe eſtate he now hath, and at the ſaid time when, &c. had, in his ſaid laſt-mentioned meſſuage and tenement, with the appurtenances, for all the time aforeſaid, have intercommoned and uſed, and been accuſtomed to intercommon in the ſaid part of R. M. aforeſaid lying in the townſhip of B. in which, by reaſon of vicinage, with all their commonable cattle levant and couchant, upon the ſaid laſt-mentioned meſſuage and tenement, with the appurtenances, and depaſturing in and upon the ſaid part of R. M. lying within the ſaid townſhip of S. every year at all times of the year; and the ſaid John being ſo ſeiſed of the ſaid laſt-mentioned meſſuage and tenement, with the appurtenances, he the ſaid John, before the ſaid time when, &c. that is to ſay, on the ſaid ſixth day of June 1741, put his ſaid cattle in the ſaid declaration mentioned, then being his commonable cattle levant and couchant in and upon the ſaid laſt-mentioned meſſuage and tenement, with the appurtenances, in and upon the ſaid part of R. M. aforeſaid lying in the ſaid townſhip of S. to depaſture the graſs then growing there, and to uſe his ſaid common of paſture there as it was lawful for him to do;

do; and becauſe the ſaid part of R. M. aforeſaid, lying in the ſaid townſhip of B. in which, &c. on the ſame day and year, and from thence until and at the ſaid time when, &c. was not divided nor ſeparated from the ſaid part of R. M. aforeſaid lying within the ſaid townſhip of S. by any hedge, incloſure, fence, or other diviſion whatſoever, ſufficient to prevent cattle depaſturing in the ſaid part of R. M. aforeſaid lying within the ſaid townſhip of S. and uſing the ſaid common of paſture, from paſſing and eſcaping therefrom into the ſaid part of R M. aforeſaid lying in the ſaid townſhip of B. in which, &c. the ſaid cattle of him the ſaid John, ſo uſing the ſaid common of paſture as laſt-mentioned, afterwards, and before the ſaid time when, &c. to wit, upon the ſame day and year laſt-mentioned, of their own accord eſcaped out of the ſaid part of R. M. aforeſaid lying within the ſaid townſhip of S. where they were uſing the ſaid common as aforeſaid, and entered into the ſaid part of R. M. aforeſaid lying in the ſaid townſhip of B. in which, &c. adjoining thereto by reaſon of vicinage, and were there for the cauſe aforeſaid eating the graſs there then growing, until the ſaid J. P. and T. at the ſaid time when, &c. of their own wrong took the ſaid cattle there, and unjuſtly detained the ſame againſt ſureties and pledges until, &c. as the ſaid John by his ſaid declaration above complains againſt them; and this, &c.; wherefore, &c. as before.

Replication.

And the ſaid J. P. and T. as to the ſaid plea of the ſaid John by him firſt above pleaded in bar to the ſaid cognizance of the ſaid J. P. and T. by them made, ſay, that by reaſon of any thing in that behalf above pleaded by the ſaid John the ſaid J. P. and T. ought not to be barred from their cognizance; becauſe they as before ſay, that the ſaid two hundred and ſeventy acres of land lying in the ſaid townſhip of B. in which, &c. are, and at the ſaid time when, &c. were, the ſoil and freehold of the ſaid Michael, and that the ſaid cattle of the ſaid John, at the ſaid time when, &c. were in the ſaid two hundred and ſeventy acres of ground lying in the townſhip of B. in which, &c. eating the graſs there growing, and doing damage there by the wrong and injury of the ſaid John, and without the cauſe by the ſaid John in his ſaid plea in that behalf above alledged; and this they are ready to verify; wherefore, as before, they pray judgment and a return of the ſaid cattle together with their damages, according to the form of the ſtatute in ſuch caſe made and provided, to be adjudged to them, &c. [Same replication to the other plea in bar.]

Demurrer.

[Plaintiff demurs, and ſhews for cauſe], that the ſaid plea by way of replication pleaded concludes with an averment, whereas the the ſame ought to have concluded to the country; and that the ſaid plea tends to put in iſſue ſeveral various and ſundry matters, when the ſame ought to have put one ſingle matter in iſſue only, and that the ſame is uncertain, not iſſuable, and wants form,

&c. [Same demurrer to the other replication; defendants join in demurrer.]

Avowry by a cuſtomary tenant, damage feſant upon the common.

PATTISON *againſt* NEWBURN AND OTHERS. } AND the ſaid Simon Newburn, W. and L. by Thomas Henzell their attorney, come and defend the wrong and injury, when, &c. and the ſaid Simon in his own right well avows, and the ſaid W. and L. as bailiffs of the ſaid S. well acknowledge the taking of the ſaid cattle in the ſaid place in which, &c. and juſtly, &c.; becauſe they ſay, that the ſaid place in which, &c. contained, and at the ſaid time when, &c. did contain, five hundred acres of paſture, with the appurtenances, and is, and at the ſaid time when, &c. and alſo from time whereof the memory of man is not to the contrary was, parcel of the manor of Hexham, in the ſaid county and that long before the ſaid time when, &c. to wit, on the twenty-ſecond of February 1738, Major Allgood, gentleman, was ſeiſed of the manor of Hexham, with the appurtenances, in the ſaid county, in his demeſne as of fee, of which ſaid manor an ancient meſſuage, with the appurtenances, in Acomb, in the ſaid county, then and at the ſaid time when, &c. and alſo from time whereof the memory of man is not the contrary was, and yet is alſo parcel and a cuſtomary tenement of the ſaid manor, and demiſed and demiſeable by copy of the court roll of the ſame manor, by the lord of the ſaid manor or his ſteward of the court of the ſaid manor for the time being to pay any perſon or perſons willing to take the ſame in fee ſimple or otherwiſe, at the will of the lord, according to the cuſtom of the ſaid manor; within which ſaid manor of Hexham there now is, and from time whereof the memory of man is not to the contrary was, a certain cuſtom that all and every the cuſtomary tenants of the ſaid meſſuage, with the appurtenances, for the time being, reſpectively have had, and have uſed, and been accuſtomed to have, common of paſture for all their commonable cattle levant and couchant upon the ſaid meſſuage, with the appurtenances, in and upon the ſaid place called Acomb Fell, otherwiſe Acomb Common, in which, &c. every year at all times of the year, as belonging and appertaining to the ſaid meſſuage, with the appurtenances: And the ſaid Simon, W. and L. further ſay, that the ſaid Major Allgood being ſo ſeiſed of the ſaid manor, with the appurtenances, in form aforeſaid, he the ſaid Major Allgood, before the ſaid time when, &c. that is to ſay, at the court of him the ſaid Major Allgood, held at the manor of Hexham aforeſaid, in and for the ſaid manor, on the twenty-ſecond of February 1738, before John Ord, gentleman, then ſteward of the court of the ſaid manor, by copy of court roll of the ſaid manor, granted the ſaid ancient meſſuage, with the appurtenances, amongſt other cuſtomary tenements of the ſaid manor, to the ſaid Simon Newburn, to have and to hold the ſame to the ſaid Simon and his heirs, at the will of the lord of the ſaid manor, according to the cuſtom of the ſaid manor; by virtue of which ſaid grant the ſaid Simon, long before the ſaid

time when, &c. entered into the ſaid meſſuage, with the appurtenances, and at the ſaid time when, &c. was, and yet is ſeiſed in his demeſne as of fee at the will of the lord of the ſaid manor, according to the cuſtom of the ſaid manor; and becauſe the cattle aforeſaid, at the ſaid time when, &c. were in the ſaid place in which, &c. depaſturing the graſs there then growing, and there doing damage, by reaſon whereof the ſaid Simon Newburn could not have and enjoy his common of paſture aforeſaid, in the ſaid place in which, &c. in ſo ample and beneficial a manner as of right he then ought to have had and enjoyed the ſame; he the ſaid Simon in his own right well avows, and the ſaid W. and L. as bailiffs of the ſaid Simon, well acknowledge the taking of the ſaid cattle in the ſaid place in which, &c. and juſtly, &c. ſo doing damage there; and this they are ready to verify; wherefore they pray judgment and a return of the ſaid cattle, together with their damages, coſts, and charges, according to the form of the ſtatute in this behalf, to be adjudged to them, &c.

Plea, that the preceding lord had enfeoffed A. S. of a piece of ground, and granted him common of paſture.

And the ſaid William Pattiſon ſaith, that for the reaſons before alledged neither the ſaid Simon Newburn ought to avow, nor the ſaid W. and L. as his bailiffs, ought to acknowledge the taking of the ſaid cattle in the ſaid plea in which, &c. to be juſt; becauſe he ſaith, that the ſaid place in which, &c. now is, and at the ſaid time when, &c. and from time whereof the memory of man is not to the contrary was, called and known as well by the name of Acomb Fell, otherwiſe Acomb Common, and that true it is that the ſaid place in which, &c. contained, and at the ſaid time when, &c. did contain five hundred acres of paſture, with the appurtenances, and is, and at the ſaid time when, &c. and alſo from time whereof the memory of man is not to the contrary was, parcel of the manor of Hexham, in the ſaid county; but the ſaid William Pattiſon further ſaith, that long before the ſaid time when, &c. and alſo long before the ſaid Major Allgood had any thing of and in the ſaid manor of Hexham, with the appurtenances, in the ſaid county, that is to ſay, the eighth of June 1675, one John Fennick, eſquire, was ſeiſed of and in the ſaid manor of Hexham, with the appurtenances, in the ſaid county, whereof the ſaid place in which, &c. then was, and yet is parcel in his demeſne as of fee, and at the ſaid time when, &c. the ſaid John Fennick was ſo ſeiſed of and in the ſaid manor of Hexham, with the appurtenances, as aforeſaid, whereof, &c. the ſaid John Fennick and one Theophilus Anderton, gentleman, were ſeiſed of and in a certain parcel of ground containing two hundred and fifty acres called Akwood, with the appurtenances, lying and being in the ſaid pariſh of St. John, in the ſaid county of Northumberland, in his demeſne as of fee; and the ſaid John Fenwick and Theophilus Anderton being ſo ſeiſed of and in the ſaid parcel of ground, with the appurtenances, as aforeſaid, and the ſaid John Fenwick being at the ſaid time ſo ſeiſed of the ſaid manor of Hexham, with the appurtenances, whereof, &c. as aforeſaid, they the

ſaid

ſaid John Fenwick and Theophilus Anderton, long before the ſaid time when, &c. and alſo long before the ſaid Major Allgood had any thing of and in the ſaid manor of Hexham, with the appurtenances, that is to ſay, on the ſaid eighth of June 1675, at the pariſh of St. John aforeſaid, by a certain indenture then and there made between the ſaid John Fenwick and Theophilus A. by their names of and of the one part, and one Anthony Sharp, of Hexham, in the aforeſaid county of N. gentleman, of the other part; the one part of which ſaid indenture, ſealed with the ſeals of the ſaid J. F. and Theophilus A. the ſaid William Pattiſon brings here into court, the date whereof is the ſame day and year laſt-mentioned, did enfeoff the ſaid Anthony Sharp of the ſaid parcel of ground called Akwood, with the appurtenances, to hold to the ſaid Anthony Sharp and his heirs, to the uſe of the ſaid A. Sharp and his heirs for ever; and the ſaid J. Fenwick by the ſaid indenture did grant to the ſaid Anthony, his heirs and aſſigns, common of paſture at all times of the year, for all manner of beaſts and cattle levant and couchant in and upon the ſaid parcel of ground called A. in, through, over, and upon the ſaid place in which, &c.; by virtue of which ſaid feoffment, and by force of the ſtatute for transferring uſes into poſſeſſion, the ſaid Anthony Sharp became and was ſeiſed of the ſaid parcel of ground called Akwood in his demeſne as of fee, and by virtue of the ſaid grant became and was lawfully entitled to and had common of paſture for all his commonable cattle levant and couchant on his ſaid parcel of ground called Akwood, in, through, over, and upon the ſaid place in which, &c. every year at all times of the year, as belonging and appertaining to his ſaid parcel of ground called Akwood; and the ſaid A. S. being ſo ſeiſed of the ſaid parcel of ground called Akwood, with the appurtenances, in his demeſne as of fee, he the ſaid A. S. afterwards, and long before the ſaid time when, &c. that is to ſay, the firſt of January 1701, at the pariſh of St. J. aforeſaid, died ſo ſeiſed of ſuch his eſtate therein, after whoſe deceaſe the ſaid parcel of ground called Akwood, with the appurtenances, deſcended and came to one Henry Sharp, as ſon and heir of the ſaid A. Sharp; whereupon the ſaid Henry Sharp entered into the ſaid parcel of ground called Akwood, with the appurtenances, and was ſeiſed thereof with the common of paſture thereto belonging in his demeſne as of fee; and the ſaid H. Sharp, being ſo ſeiſed thereof as aforeſaid, afterwards, and long before the ſaid time when, &c. that is to ſay, the ninth of February 1701, at the pariſh of St. J. aforeſaid, by a certain indenture then and there made between him the ſaid H. Sharp of the one part, and one George Allgood of the other part (the one part of which ſaid indenture, ſealed with the ſeal of the ſaid H. Sharp, bearing date the day and year laſt aforeſaid, the ſaid W. Pattiſon bringeth here into court), for and in conſideration of a certain ſum of money to him the ſaid Henry Sharp in hand paid by the ſaid George Allgood, did bargain and ſell to the ſaid George Allgood the ſaid parcel of ground called Akwood, with the appurtenances, to have and

A. S. died, and the land and common deſcended to H. S. his heir.

H. S. became ſeiſed, and ſold to G. A. by deed and releaſe.

and to hold to him and his aſſigns, from the day next before the day of the date of the ſaid indenture, for and during and unto the full end and term of one whole year from thence next enſuing, and fully to be complete and ended, as by the ſaid laſt-mentioned indenture more fully appears; by virtue of which ſaid bargain and ſale, and alſo by force of the ſtatute for transferring uſes into poſſeſſion, the ſaid George Allgood was and became poſſeſſed of the ſaid parcel of ground called Akwood, with the appurtenances, for the ſaid term, the reverſion thereof to the ſaid H. Sharp and his heirs belonging; and the ſaid George Allgood, being ſo as aforeſaid poſſeſſed thereof, the ſaid Henry Sharp being ſeiſed of the reverſion thereof in his demeſne as of fee, afterwards, and before the ſaid time when, &c. that is to ſay, the tenth of February 1701, at the pariſh of St. J. aforeſaid, he the ſaid Henry Sharp, by a certain other indenture then and there made between the ſaid Henry Sharp of the one part, and the ſaid G. Allgood of the other part, (one part of which ſaid, &c. *profert in curia*), did releaſe to the ſaid George Allgood and his heirs his aforeſaid reverſion of and in the ſaid parcel of ground called Akwood, with the appurtenances, to have and to hold to the ſaid George Allgood and his heirs, to the only uſe and behoof of the ſaid George Allgood, his heirs and aſſigns for ever, as by the ſaid laſt-mentioned indenture more fully appears; and by reaſon of the premiſes the ſaid G. A. became and was ſeiſed of the ſaid parcel of ground called Akwood, with the ſaid common of paſture thereto belonging in his demeſne as of fee, and being ſo ſeiſed thereof, he the ſaid G. A. afterwards, and before the ſaid time when, &c. that is to ſay, the ſeventh of September 1727, at the pariſh of St. J. aforeſaid, made his laſt will and teſtament in writing, and thereby did give and deviſe the ſaid parcel of ground called Akwood, with the appurtenances, to one L. A. and Q. A. and their heirs, and afterwards, that is to ſay, on the twenty-ſeventh of February 1727, at the pariſh of St. J. aforeſaid, died ſo ſeiſed thereof as aforeſaid, after whoſe death the ſaid L. and Q. by virtue of the ſaid laſt will and teſtament, became and were ſeiſed of the ſaid parcel of ground called Akwood, with the ſaid common of paſture thereunto belonging in their demeſne as of fee; and the ſaid L. and Q. being ſo ſeiſed thereof, the ſaid L. afterwards, and long before the ſaid time when, &c. that is to ſay, the eighth of January 1734, at the pariſh of St. J. aforeſaid, died ſo ſeiſed of ſuch his eſtate therein, and the ſaid Q. there ſurvived him, and thereby became and was alſo ſeiſed thereof in his demeſne as of fee by right of ſurvivorſhip; and the ſaid Q. being ſo ſeiſed thereof, afterwards, &c. [ſets forth the death of Q. and that the ſame deſcended to his ſon, and that he conveyed the ſame by leaſe and releaſe to G. W. and G. S. and that they conveyed the ſame to M. E. ſpinſter, by leaſe and releaſe]; and being ſo ſeiſed thereof ſhe the ſaid M. E. afterwards, and before the ſaid time when, &c. to wit, the firſt of March 1741, at the pariſh of St. J. aforeſaid, demiſed the ſaid parcel of ground called Akwood, with the appurtenances, to the ſaid William Pattiſon and one William Errington,

G. A. made his will, and deviſed it to L. A. and Q. A.

L. died and Q. ſurvived.

Q. died and it deſcended to his ſon, who conveyed to G. W. and G. S. who conveyed to M. E. who demiſed to plaintiff.

rington, to have and to hold to the ſaid W. P. and W. E. from the feaſt of the Annunciation of the Bleſſed Virgin Mary then next following for ſo long time as the ſaid Mary and W. P. and W. E. ſhould pleaſe; by virtue of which ſaid demiſe the ſaid W. P. and W. E. afterwards, and before the ſaid time when, &c. to wit, on the morrow of the ſaid laſt-mentioned feaſt, entered into the ſaid parcel of ground called Akwood, with the appurtenances, then and continually from thenceforth hitherto were and ſtill are poſſeſſed thereof: And the ſaid W. P. does aver, that at the time of making of the ſaid grant of the ſaid common of paſture in the ſaid place in which, &c. for all commonable cattle of the ſaid cuſtomary tenement of the ſaid Simon Newburn, for the time then being, and of all other perſons having common of paſture there, over and beſides the ſaid common of paſture ſo granted to the ſaid Anthony Sharp and his heirs, and that the ſaid Anthony Sharp, and all the ſaid other tenants and occupiers of the ſaid parcel of ground called Akwood, for the time being, from the time of making the ſaid grant unto the ſaid time when, &c. have uſed, and been accuſtomed to have, and ſtill of right ought to have common of paſture in the ſaid place in which, &c. for all their commonable cattle levant and couchant in and upon the ſaid parcel of ground called Akwood, every year at all times of the year, as belonging and appertaining to the ſaid parcel of ground called Akwood; by virtue of which ſaid grant, and the ſaid W. P. being ſo poſſeſſed of the ſaid parcel of ground, before the ſaid time when, &c. that is to ſay, the nineteenth of April 1742, did put the ſaid cattle, being his own commonable cattle levant and couchant upon the ſaid parcel of ground called Akwood, into and upon the ſaid place in which, &c. to depaſture the graſs there then growing, and to uſe his ſaid common of paſture there as it was lawful for him to do; and the ſaid cattle were in the ſaid place in which, &c. depaſturing upon the graſs there then growing, uſing the ſaid common of paſture there, until the ſaid S. W. and L. of their own wrong, at the ſaid time when, &c. took the ſaid cattle of him the ſaid W. P. and unjuſtly detained the ſame againſt ſureties and pledges until, &c. in manner and form as the ſaid William hath above thereof complained againſt them; and this he is ready to verify; wherefore ſince the ſaid S. W. and L. have above acknowledged the taking of the ſaid cattle in the ſaid plea in which, &c. the ſaid W. P. prays judgment and his damages, by reaſon of the taking and unjuſtly detaining of the ſaid cattle, to be adjudged to him, &c.

Averment, that the time of the making the grant there was ſufficient com-

And the ſaid J. W. and L. ſay, that by any thing by the ſaid W. P. in pleading above alledged, they ought not to be barred in this behalf, to wit, the ſaid Simon, from having his ſaid avowry, nor the ſaid W. and L. from having their ſaid cognizance; becauſe proteſting that neither the ſaid Ann Sharp, nor the ſaid other tenants and occupiers of the ſaid parcel of ground called Akwood, for the time being, from the time of making the ſaid

Replication, verifie the ſufficiency of com-

grant

grant in the ſaid plea mentioned unto the ſaid time when, &c. have had and have uſed, and been accuſtomed to have, and of right ought to have common of paſture in the ſaid place in which, &c. for all their commonable cattle levant and couchant in and upon the ſaid parcel of ground called Akwood, every year at all times of the year, as belonging and appertaining to the ſaid parcel of ground called Akwood, as the ſaid W. P. hath in pleading above alledged; yet for plea in this behalf they ſay, that within the ſaid manor of Hexham there are, and at the ſaid time of taking, &c. were, and alſo from time whereof the memory of man is not to the contrary there have been, divers other cuſtomary meſſuages and lands, parcel of the ſame manor, ſituate, lying, and being in the village or townſhip of Acomb, within the ſaid manor, and demiſed and demiſable by copies of the rolls of the court of the ſaid manor for the time in fee ſimple, or otherwiſe, at the will of the lord of the ſaid manor for the time being, according to the cuſtom of the ſaid manor, beſides the ſaid cuſtomary tenement of the ſaid Simon, and that within the ſaid manor there is, and from time whereof the memory of man is not to the contrary hath been, a cuſtom uſed and approved therein, that the ſeveral cuſtomary tenants of the ſaid ſeveral cuſtomary tenements, with the appurtenances, for the time being reſpectively, ſituate, lying, and being within the ſaid village or townſhip of Acomb, have had and have uſed, and been accuſtomed to have, and ſtill of right ought to have, common of paſture for all their commonable cattle levant and couchant upon their ſaid ſeveral cuſtomary tenements, with the appurtenances, in the ſaid place called Acomb Fell, otherwiſe Acomb Common, in which, &c. every year at all times of the year, as belonging and appertaining to their ſaid reſpective tenements, with the appurtenances: And the ſaid Simon, W. and L. further ſay, that in the manor of Anwicke Grange, in the ſaid county, there are, and at the ſaid time of taking there were, and from time whereof the memory of man is not to the contrary have been divers freehold meſſuages and lands, with the appurtenances, of divers tenants and owners thereof, which are, and during all the time aforeſaid whereof, &c. have been held in their demeſne as of fee of the lord of the ſaid manor of Anwicke Grange, for the time being, as of his ſaid manor by ſeveral rents and ſervices, the ſame rents and ſervices being parcel of the ſaid manor of Anwicke Grange, and that the ſaid ſeveral tenants of the ſaid ſeveral freehold tenements, with the appurtenances, being ſeiſed of their ſeveral freehold tenements in their demeſne as of fee, and all thoſe whoſe eſtate they ſeverally had and have in the ſame, have, during all the time aforeſaid whereof, &c. had and have uſed, and been accuſtomed to have, and ſtill of right ought to have for themſelves, their farmers and tenants thereof reſpectively, common of paſture for all their commonable cattle levant and couchant upon their ſaid reſpective freehold tenements, with the appurtenances, in the ſaid place called Acomb Fell, otherwiſe Acomb Common, in which, &c. every year at all times of the year, as belonging and appertaining to their ſaid reſpective tenements, with

the appurtenances: And the ſaid S. W. and L. further ſay, that the ſaid cattle of the ſaid W. P. of the ſaid W. P.'s own wrong, at the ſaid time when, &c. were in the ſaid place in which, &c. depaſturing the graſs then growing there, and doing damage there, by reaſon whereof the ſaid S. could not have and enjoy his ſaid common of paſture in the ſaid place in which, &c. in ſo ample and beneficial a manner as of right he then ought to have had and enjoyed the ſame, as in the ſaid avowry and cognizance is above alledged; without this, that at the time of making of the ſaid grant of the ſaid common of paſture in the ſaid place in which, &c. to the ſaid A. S. by the ſaid John Fenwick, as in the ſaid plea in bar to the ſaid avowry and cognizance is above-mentioned, there was left ſufficient common of paſture in the ſaid place in which, &c. for all the commonable cattle of the ſaid cuſtomary tenant of the ſaid cuſtomary tenement of the ſaid Simon for the ſaid time then being, and all other perſons having common of paſture there, over and beſides the ſaid common of paſture granted to the ſaid Anthony Sharp and his heirs as aforeſaid, as the ſaid W. P. hath above in pleading alledged; and this the ſaid S. W. and L. are ready to verify; wherefore, as before, they pray judgment and a return of the ſaid cattle, together with their damages, may be adjudged to them, &c. R. DRAPER.

Iſſue upon traverſe.

Cognizance for taking a mare, damage feaſant.

AND the ſaid M. J. N. the elder, and J. N. the younger, by A. B. their attorney, come and defend the wrong and injury, when, &c.; and as bailiff of M. R. well acknowledge the taking of the ſaid mare in the ſaid place in which, &c. contains, and at the ſaid time when, &c. did contain five hundred acres of paſture, with the appurtenances, in the pariſh of B. aforeſaid; which ſaid five hundred acres of paſture, with the appurtenances, are, and at the ſaid time when, &c. were the ſoil and freehold of the ſaid M. R.; and becauſe the ſaid mare, at the ſaid time when, &c. was in the ſaid five hundred acres of paſture depaſturing the graſs therein then growing, and then doing damage, the ſaid M. J. N. and J. N. as bailiffs of the ſaid M. R. well acknowledged the taking of the ſaid mare in the ſaid place in which, &c. and juſtly, &c. there doing damage, &c.

Plea in bar, common of paſture belonging to a cuſtomary tenement which was demiſed to plaintiff by J. S.

And the ſaid George ſaith, that the ſaid J. R. and J. N. as bailiffs of the ſaid M. R. ought not to acknowledge the taking of the ſaid mare in the ſaid place in which, &c. as juſt: becauſe he ſays, that the ſaid place called Black Line Rigg, in which, &c. as at the ſaid time when, &c. was, and from time immemorial hath been part and parcel of a certain great waſte or common called Blacklerin, lying and being in the pariſh aforeſaid, and within the manor of Bewcaſtle, in the ſaid county of Cumberland, and parcel of that manor; within which ſaid manor there are, and from time whereof the memory of man is not to the contrary, have been divers cuſtomary tenements deſcendible, and which have de-

ſcended from anceſtor to heir as tenant right eſtates reſpectively held of the lord of the ſaid manor for the time being as of the ſaid manor, by diverſe rents and certain ſervices according to the cuſtom of the ſaid manor: And the ſaid George further ſaith, that before and at the ſaid time when, &c. one Allen Routledge was and ſtill is ſeiſed of and in a certain meſſuage and forty acres of land called the Raw, with the appurtenances, being ſuch cuſtomary tenement as of his cuſtomary tenant right eſtate in form aforeſaid deſcendible and deſcending according to the cuſtom of the ſaid manor, held of the lord of the ſaid manor as of his manor, and parcel of the manor aforeſaid; and that within the ſaid manor there is, and from time whereof the memory of man is not to the contrary, there hath been an ancient cuſtom there uſed and approved, that every ſuch cuſtomary tenant of the ſaid cuſtomary tenement, with the appurtenances, whereof the ſaid Allen is ſeiſed as aforeſaid for the time being, ought to have, and for the whole time aforeſaid hath had and uſed, and hath been uſed and accuſtomed to have for himſelf and his farmers, or farmer thereof reſpectively, common of paſture in the ſaid waſte or common called Blacklerin, whereof, &c. for all his and their commonable cattle reſpectively levant and couchant on the ſaid cuſtomary tenement, with the appurtenances, every year at all times of the year, as belonging and appertaining to the ſaid cuſtomary tenement, with the appurtenances: And the ſaid Allen being ſo ſeiſed of the ſaid meſſuage and forty acres of land as aforeſaid, he the ſaid Allen, before the ſaid time when, &c. to wit, the twentieth of March 1740, at the pariſh aforeſaid, demiſed to the ſaid George and one William Daviſon the ſaid meſſuage and forty acres of land, with the appurtenances, to have and to hold to the ſaid George and William Daviſon from thenceforth for one whole year, and ſo from year to year as long as it ſhould pleaſe the ſaid parties; by virtue of which ſaid demiſe the ſaid George and William Daviſon entered into the ſaid demiſed premiſes, with the appurtenances, and before the ſaid time when, &c. were and yet are poſſeſſed thereof, and being ſo poſſeſſed thereof, the ſaid George, before the ſaid time when, &c. the ſame day and year in the ſaid declaration mentioned, put the ſaid mare in the ſaid declaration mentioned, being his own proper mare levant and couchant upon the ſaid cuſtomary meſſuage and tenement, with the appurtenances, ſo as aforeſaid demiſed into the ſaid place in which, &c. parcel, &c. to feed upon the graſs there growing, and to uſe the ſaid common of paſture of the ſaid George and William there as it was lawful for him to do, and the ſaid mare was depaſturing in the ſaid place in which, &c. parcel, &c. for the cauſe aforeſaid, until the ſaid M. J. N. and J. N. at the ſaid time when, &c. of their own wrong took the ſaid mare in the ſaid declaration mentioned in the ſaid place in which, &c. parcel, &c. and unjuſtly detained her againſt ſureties and pledges until, &c. as the ſaid George hath above complained againſt them; and this the ſaid George is ready to verify; wherefore foraſmuch as the ſaid M. J. N. and J. N. have acknowledged the taking of the ſaid

mare in the ſaid place in which, &c. parcel, &c. he the ſaid George prays judgment and his damages, on occaſion of the premiſes, to be adjudged to him, &c.

Replication, traverſe that cuſtom.

And the ſaid M. J. N. and J. N. ſay, that by reaſon of any thing above pleaded by the ſaid George, they the ſaid M. J. N. and J. R. ought not to be barred from their ſaid cognizance; becauſe they ſay, that the ſaid five hundred acres of paſture in which, &c. are, and at the ſaid time when, &c. were the ſoil and freehold of the ſaid M. R. as they have above alledged, and that the ſaid mare, in the ſaid declaration mentioned, was in the ſaid place in which, &c. depaſturing the graſs there growing, and doing damage there of the wrong and injury of the ſaid George; without this, that within the ſaid manor there is, &c. [traverſe the cuſtom ſet out in the plea] in manner and form as the ſaid George hath in his ſaid plea above alledged; and this, &c.; wherefore they pray judgment and a return, &c.

in affi of the cuſtom verdict for plaintiff.

FINES AND AMERCIAMENTS.

Declaration in replevin.

INGRAM AND HALE *at the ſuit of* FLETCHER.

STAFFORDSHIRE, to wit. Joſeph Ingram and John Hale were ſummoned to anſwer James Fletcher in a plea why they took the cow of him the ſaid James, and unjuſtly detained it againſt ſureties and pledges, &c.; and whereupon the ſaid James, by John Lilly his attorney, complains that the ſaid Joſeph and John, on the twentieth day of February, in the ſeventh year of the reign of the lord William the Third, now king of England, &c. at Shenſton, in the county aforeſaid, in a certain place there called the Lane, took the cow aforeſaid of him the ſaid James, and unjuſtly detained it againſt ſureties and pledges until, &c. whereby the ſaid James ſays that he is prejudiced, and hath damage to the value of twenty pounds; and therefore he produces the ſuit, &c.

Cognizance for a diſtreſs for a fine at a court leet.

And the ſaid Joſeph and John Hale, by Thomas Callowe their attorney, come and defend the force and injury, when, &c. and as bailiffs of Rowland Fryth, gentleman, well acknowledge the taking of the cow aforeſaid in the ſaid place in which, &c. and juſtly, &c.; becauſe they ſay, that the ſame place in which the taking of the cow aforeſaid is ſuppoſed to be contains, and at the ſaid time when the taking of the cow aforeſaid is ſuppoſed to be contained in itſelf an acre of land, with the appurtenances, in Shenſton aforeſaid; which ſaid town of Shenſton is, and at the ſaid time when, &c. and alſo from time out of mind was within the manor of Shenſton, with the appurtenances, in the county aforeſaid; of which ſaid manor, with the appurtenances, the ſaid Rowland is, and at the time when, &c. and long before, was

Seiſin in fee. Preſcription for a court leet.

ſeiſed in his demeſne as of fee; and the ſaid Rowland, and all thoſe whoſe eſtate he hath in the ſame manor, with the appurte-

nances, for time out of mind have had, and been accuſtomed to have a court leet or view of frankpledge of the ſame manor, and whatever to view of frankpledge belongs of all the inhabitants and reſiants of the manor, before the ſteward of the ſame court for the time being, every year within a month next after the feaſt of St. Michael the Archangel at that manor yearly to be held, as to the ſame manor, with the appurtenances belonging: And the ſame Joſeph and John further ſay, that within the manor aforeſaid there is, and from time out of mind hath been ſuch cuſtom, that the jurors to enquire and preſent thoſe things which to that court leet and view of frankpledge belong, charged and ſworn, at the court view of frankpledge of the manor aforeſaid, held at that manor within a month next after the feaſt of St. Michael the Archangel yearly have choſen, and for all the time aforeſaid have been accuſtomed to chooſe a proper man from the inhabitants within the manor aforeſaid, to be conſtable of the conſtablewick of Shenſton aforeſaid, to ſerve for one year in that office; which ſaid man ſo elected hath taken upon himſelf, and for all the time aboveſ. hath been uſed and accuſtomed to take upon himſelf that offi , and hath taken and been accuſtomed to take an oath for th due execution of that office, under a reaſonable penalty for ll the time aboveſaid, by the jurors aforeſaid, at ſuch court leet and view of frankpledge of that manor, held at that manor within a month next after the feaſt of St. Michael the Archangel, to wit, on the ninth day of October, in the fifth year of the reign of the lord William now king, and the lady Mary, late queen of England, &c. before Henry Fryth, gentleman, then ſteward to the ſaid Rowland of that court, the ſaid James Fletcher then and long before being an inhabitant within the manor aforeſaid at Shenſton aforeſaid, and a proper man to be a conſtable of the ſaid conſtablewick of Shenſton aforeſaid, by E. Thornton, T. Grace, J. C. J. A. J. H. W. M. W. R. N. W. T. S. J. M. J. S. J. A. and J. D. good and lawful men, and inhabiting within the manor aforeſaid, and then and there in the ſame court charged and ſworn to enquire and preſent thoſe things which to that court leet and view of frankpledge belonged, duly, and according to the cuſtom aforeſaid, was choſen to be conſtable of the conſtablewick of Shenſton aforeſaid for one year then next enſuing to ſerve in that office; and thoſe jurors then and there in the ſame court ordered, that the ſaid James ſhould take his oath for the due execution of his office aforeſaid, under the penalty of forfeiting forty ſhillings, whereof the ſaid James Fletcher immediately afterwards, to wit, the ſame day and year, there had notice (*a*); neverthe-

Cuſtom to chooſe conſtable.

A court leet held.

The plaintiff elected conſtable.

The order of the jury.

The penalty for not ſerving.

(*a*) The Chief Juſtice held this to be nought: they ſhould only elect him, and he ſhould have notice of ſuch election; and if he did not thereupon go to the juſtice of the peace to be ſworn, he ſhould be preſented for this default at the next court, and be amerced, and the amerciament aſſered. The court alſo held it nought for not laying the notice more particular, as that he was preſent in court, or that he had notice given that he was elected conſtable, and required to take an oath before a juſtice of peace. A ſecond preſentment prout per record, &c. The fine not paid. Note. It is ſaid in a caſe in Moore, that the bailiffs ſhould have had a warrant from the ſteward to diſtrain.

leſs the ſaid James hath not taken his oath for the due execution of the office of conſtable aforeſaid, nor hath executed or taken upon himſelf that office, but to do it then and often afterwards there abſolutely refuſed; wherefore afterwards and before the ſaid time when, &c. to wit, at a court leet or view of frankpledge of the ſaid manor of the ſaid Rowland, held at that manor within a month next after the feaſt of St. Michael the Archangel, to wit, on the eleventh day of October, in the ſixth year of the reign of the ſaid lord king William and the lady Mary, late queen of England, before Henry Fryth, then ſteward to the ſaid Rowland of that court, by Edward Thernton, J. C. W. P. T. G. J. P. J. J. E. H. T. S. J. M. W. M. G. H. J. S. the younger, and J. A. good and lawful men then inhabiting within the manor aforeſaid, then and there in the ſame court ſworn and charged to enquire and preſent thoſe things which to that court leet or view of frankpledge belonged, it was preſented that the ſaid James Fletcher, becauſe he was duly elected to be conſtable of the conſtablewick of Shenſton aforeſaid, at the laſt leet held for the manor aforeſaid, and under the penalty of forty ſhillings on him ſet, was ordered to take upon himſelf that office, and execute it, and take his oath in form aforeſaid for the due execution of that office, which, or any part whereof, he had not done, wherefore he had forfeited to the lord of the manor aforeſaid, as by the record thereof in the cuſtody of the ſteward of the court of the manor of him the ſaid Rowland at that manor remaining more fully appears; and becauſe the ſaid forty ſhillings for that penalty to the ſame Rowland ſo as aforeſaid being lord of the manor aforeſaid, at the ſaid time when, &c. were in arrear and unpaid, the ſame Joſeph and John Hale, as bailiffs of him the ſaid Rowland, well acknowledge the taking of the cow aforeſaid in the ſaid place in which, &c. and juſtly, &c. for the ſame forty ſhillings for the penalty or amerciament aforeſaid to the ſaid Rowland, ſo being in arrear and unpaid, and within the manor aforeſaid, &c.

Demurrer. And the ſaid James ſays, that by any thing by the ſaid Joſeph and John above in the cognizance aforeſaid by pleading alledged, the ſame Joſeph and John in manner and form aforeſaid above pleaded, and the matter in the ſame contained, are not ſufficient in law to acknowledge the taking of the cow aforeſaid in the ſaid place in which, &c. juſt, and that he to the cognizance in manner and form aforeſaid made and pleaded, hath no neceſſity, nor is by the law of the land obliged to anſwer; and this he is ready to verify; wherefore for want of a ſufficient plea in this behalf the ſame James prays judgment and his damages, by reaſon of the taking and unjuſt detention of the cow aforeſaid, to be adjudged to him, &c.

Joinder of demurrer. And the ſaid Joſeph and John ſay, that the plea aforeſaid by them the ſaid Joſeph and John in manner and form aforeſaid above pleaded,

pleaded, and the matter in the ſame contained, are good and ſufficient in law for them the ſaid Joſeph and John to acknowledge the taking of the cow aforeſaid in the ſaid place in which, &c. juſt; which ſaid plea, and the matter in the ſame contained, they the ſaid Joſeph and John are ready to verify and prove as the court, &c.; and becauſe the ſaid James hath not pleaded or anſwered to that cognizance, nor hitherto any way denied it, the ſame Joſeph and John pray judgment and a return of the cow aforeſaid, together with their damages, coſts, and charges, according to the form of the ſtatute in ſuch caſe made and provided, to be adjudged to them, &c.; but becauſe the court of the ſaid lord the king now here are not yet adviſed to give their judgment of and upon the premiſes, day therefore is given to the parties aforeſaid before the lord the king, until wheresoever, &c. to hear their judgment of and upon the premiſes, becauſe the court of the ſaid lord the king now here thereof not yet, &c.

SILAS TITUS, eſquire, *againſt* PARKINS, KNIGHT. } HERTFORD, to wit. William Parkins, late of Buſhey, in the county aforeſaid, knight, was ſummoned to anſwer to Silas Titus, eſquire, in a plea, why he took the cattle of him the ſaid Silas, and unjuſtly detained them againſt ſureties and pledges, &c.; and whereon the ſame Silas, by John Wharton his attorney, complains that the ſaid William, on the eighteenth day of May, in the firſt year of the reign of the lord James the Second, now king of England, &c. at Buſhey, in a certain place there called Mary Hill Ground, the cattle of him the ſaid Silas, to wit, thirty-ſix wether ſheep, twelve ewe ſheep, and eight lambs, took and unjuſtly detained them againſt ſureties and pledges until, &c. whereby the ſame Silas ſays that he is prejudiced, and hath damage to the value of ten pounds; and therefore he produces the ſuit, &c. Declaration. 3. Lev. 225.

And the ſaid William, by Randal Baldwin his attorney, comes and defends the force and injury, when, &c. and the ſaid William, in his own proper right, well avows, and as bailiff to Algernon, earl of Eſſex, well acknowledges the taking of the cattle aforeſaid in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that the ſame place in which the taking of the cattle aforeſaid is ſuppoſed to be, did contain in itſelf two acres of paſture, with the appurtenances, in Buſhey aforeſaid; which ſaid two acres of paſture, with the appurtenances, are, and at the ſaid time when, &c. were the ſoil and freehold of them the ſaid William and Algernon, earl of Eſſex; and becauſe the cattle aforeſaid, at the ſaid time when, &c. were in the ſaid two acres of paſture eating up the graſs in the field then growing, and doing damage there, the ſame William, in his own proper right, well avows, and as bailiff to ſaid Algernon, earl of Eſſex, well acknowledges the taking of the cattle aforeſaid in the ſaid place in which, &c. and juſtly, &c. ſo doing damage there, &c. Avowry and cognizance for damage feaſant.

Bar, that the *locus in quo* is copyhold, held of the manor of Buſhey, &c.

And the ſaid Silas ſays, that the ſaid William, for the reaſon before alledged, the taking of the cattle aforeſaid in the ſaid place in which, &c. ought not in his own proper right to avow, and as bailiff of the ſaid earl, to acknowledge juſt; becauſe he ſays, that the ſaid two acres of paſture in which, &c. are, and at the ſaid time when, &c. and alſo from time immemorial were parcel of the manor of Buſhey, and cuſtomary land of the ſame manor, and demiſed and demiſeable by copy of court rolls of that manor, by the lord or lords of the ſame manor, or by their ſteward of the court of that manor for the time being, to any perſon or perſons willing to take them in fee ſimple or otherwiſe, at the will of the lord or lords, according to the cuſtom of the manor aforeſaid: And the ſame Silas farther ſays, that the ſaid earl and William, before the ſaid time when, &c. to wit, on the twenty-firſt day of April, in the firſt year of the reign of the ſaid lord the now king abovenamed, were lawfully lords of the manor aforeſaid, the ſame earl and William afterwards, and before the ſaid time when, &c. to wit, on the ſame twenty-firſt day of April, in the firſt year abovenamed, at a court of them the ſaid earl and William of their manor aforeſaid, then held for that manor within the manor at Buſhey aforeſaid, in the county of Hertford, by one Thomas Smith, gentleman, then and there ſteward of the court of their manor aforeſaid, by copy of court roll of that manor granted the ſaid two acres of paſture, with the appurtenances, in which, &c. among other things, to the ſaid Silas, to have and to hold to the ſame Silas, his heirs and aſſigns for ever at the will of the lords, according to the cuſtom of the manor aforeſaid; and the ſame Silas, according to the cuſtom of the manor aforeſaid, he the ſaid Silas being ſo thereof ſeiſed, the ſame Silas, before the ſaid time when, &c. put his cattle aforeſaid into the ſaid two acres of paſture in which, &c. to feed on the graſs there then growing, and thoſe cattle were in the ſaid two acres of paſture in which, &c. feeding on the graſs there then growing, until the ſaid William Parkins, on the ſaid eighteenth day of May, in the firſt year abovenamed, at Buſhey aforeſaid, in the ſaid two acres of paſture called Mary Hill Grounds, in which, &c. took of the ſame cattle of the ſaid Silas above againſt him complains; and this he is ready to verify; wherefore for that the ſaid William Parkins the taking of the cattle aforeſaid hath above confeſſed, the ſame Silas prays judgment and his damages, by reaſon of the taking and unjuſt detention of thoſe cattle, to be adjudged to him, &c.

That the defendant, being lord of the manor, granted it to the plaintiff in fee according, &c.

He being ſeiſed, put in his cattle,

and the defendant diſtrained them.

Replication, that the land is held of the manor of B.

And the ſaid W. ſays, that well and true it is that the ſaid two acres of paſture, with the appurtenances in which, &c. are, and at the ſaid time when, &c. and alſo from time immemorial, were parcel of the ſaid manor of Buſhey and cuſtomary lands of the ſame manor, and demiſed and demiſeable by copy of court roll of that manor by the lord or lords of the ſame manor, or by their ſteward of the court of that manor for the time being, to any perſon or perſons willing to take them in fee ſimple or otherwiſe at the

the will of the lord or lords, according to the cuſtom of the manor aforeſaid; and the ſaid earl and W. before the ſaid time when, &c. to wit, on the twenty-firſt day of April, in the firſt year of the reign of the ſaid lord the now king aboveſaid, were lawfully lords of the manor aforeſaid, and that the ſaid earl and W. then being lords of the manor aboveſaid, the ſame earl and W. afterwards and before the ſaid time when, &c. to wit, on the ſaid twenty-firſt day of April, in the firſt year aboveſaid, at Buſhey aforeſaid, in the county aforeſaid, by the ſaid T. Smith, then and there ſteward of the court of the manor aforeſaid, by copy of the court roll of that manor granted the ſaid two acres of paſture, with the appurtenances in which, &c. among other things, to the ſaid Silas, according to the form of the manor aforeſaid was then and there admitted tenant thereof; and that by virtue of a grant and admiſſion aforeſaid he the ſaid Silas, before the ſaid time when, &c. into the ſaid two acres of paſture, with the appurtenances, among other things, entered and was thereof ſeiſed in his demeſne as of fee at the will of the lords, according to the form and cuſtom of the manor aforeſaid, as the ſaid Silas above by pleading hath alledged; but the ſaid W. Parkins farther ſays, that the ſaid two acres of paſture, with the appurtenances in which, &c. together with the other lands and tenements in the ſame copy mentioned, and by the ſame copy to the ſaid Silas and his heirs granted, and to which the ſaid Silas was as aforeſaid admitted at the ſaid time of the admiſſion of the ſaid Silas to the ſame, were and yet are of the clear yearly value of twenty-eight pounds, and that the ſaid earl and W. by the ſaid T. Smith in the ſaid full court of the manor aforeſaid held within that manor on the ſaid twenty-firſt day of April, in the firſt year of the reign of the ſaid lord the now king aboveſaid, he the ſaid T. Smith being then ſteward aforeſaid of the ſaid earl and W. then lords of the manor aforeſaid, of the ſaid court of the ſaid manor aforeſaid, after the ſaid admiſſion of the ſaid S. Titus to the ſaid two acres in which, &c. and the ſaid other lands and tenements by the copy aforeſaid made to the ſaid Silas granted then and there, did aſſeſs and appoint the ſum of thirty-five pounds for the fine for the ſaid grant to the ſaid Silas of the ſaid two acres of paſture, with the appurtenances in which, &c. and the other lands and tenements aforeſaid, by the copy aforeſaid in form aforeſaid granted, to be paid by him the ſaid Silas to the ſaid earl and W. being as aforeſaid lords of the manor aforeſaid, on the firſt day of May then next enſuing, at the porch of the pariſh church of Buſhey aforeſaid, in the ſaid county of Hertford; and that the ſaid Silas then and there, to wit, at the manor aforeſaid, of all and ſingular the premiſes had notice: And the ſaid W. further ſays, that the fine aforeſaid for the lands and tenements by the copy aforeſaid in manner and form aforeſaid granted to the ſaid Silas, was a reaſonable fine; and that the ſaid S. Titus, although he had notice from the ſaid lords of the manor aforeſaid, at the court aforeſaid held as aforeſaid at the manor aforeſaid, on the twenty-firſt day of April aforeſaid,

Grant by copy.

The yearly value.

The fine

aforeſaid, of the premiſes aforeſaid, did not pay to the ſaid earl and W. lords of the manor aforeſaid, or either of them, the ſaid ſum of thirty-five pounds for the fine aforeſaid in form aforeſaid aſſeſſed, on the ſaid firſt day of May then next enſuing the admiſſion of him the ſaid Silas at the ſaid porch of the pariſh church of Buſhey aforeſaid, but the ſame thirty-five pounds to the ſaid earl and W. then and there abſolutely denied and refuſed, and yet doth refuſe to pay; whereby the ſame S. T. hath forfeited to the ſaid earl and W. being as aforeſaid the ſaid lords of the manor aforeſaid, whereof, &c. all his cuſtomary right, eſtate, title, and intereſt aforeſaid of and in the ſaid two acres of paſture, with the appurtenances in which, &c. and the ſaid other lands and tenements in the grant aforeſaid ſpecified; after which ſaid forfeiture in form aforeſaid made, and before the ſaid time when, &c. the ſaid earl and W. being as aforeſaid lords of the manor aforeſaid into the ſaid two acres of paſture, with the appurtenances in which, &c. entered, and were and are thereof ſeiſed in their demeſne as of fee; and becauſe their cattle aforeſaid, after the entry aforeſaid, to wit, at the ſaid time when, &c. were in the ſaid two acres of paſture, with the appurtenances in which, &c. eating up the graſs in the ſame then growing, and doing damage there, the ſaid W. as before in his own proper right well avows, and as bailiff to the ſaid earl well acknowledges the taking of the cattle aforeſaid in the ſaid place in which, &c. and juſtly, &c. ſo doing damage there; and this he is ready to verify; wherefore as before he prays judgment and a return of the cattle aforeſaid together with his damages, coſts, and expences by him about his ſuit in this behalf ſuſtained, according to the form of the ſtatute in ſuch caſe made and provided, to be adjudged to him, &c.

forfeiture for non-payment.

denial to pay an uncertain fine is forfeiture.

Rm. 42. Ent. 647.

re ought to a demand, El. Jac. 617.

H. 3. c. 29

joinder, teſting the is unreaſonable. Pleads cuſtom to pay year's value ly.

And the ſaid Silas, proteſting that the ſum aforeſaid of thirty-five pounds for the fine aforeſaid for the ſaid lands and tenements by the copy aforeſaid to the ſaid Silas, in manner and form aforeſaid granted, was not a reaſonable fine, as the ſaid W. above by pleading hath alledged; for plea the ſame Silas ſays, that within the manor aforeſaid there is, and from time immemorial hath been ſuch cuſtom uſed and approved of within that manor for all the time aforeſaid, to wit, that every perſon or perſons who ſhould be admitted tenant or tenants to any cuſtomary lands or tenements of that manor, by copy of court roll of that manor, hath and have been, and ought to pay to the lord or lords of the ſame manor for the time being, for a fine of his or their admiſſion to ſuch cuſtomary lands or tenements ſo much money as thoſe lands and tenements were worth by the year at the time of ſuch admiſſion, and no more: And the ſaid Silas in fact ſays, that the ſaid two acres of paſture, with the appurtenances in which, &c. together with the other lands and tenements in the ſame copy mentioned, and by the ſame copy to the ſaid Silas and his heirs granted, and to which the ſaid Silas was as aforeſaid admitted,

t the land is th but 28l. ann. which offered to

admitted, at the time of the admiſſion of the ſaid Silas to the ſame, were worth, and yet are worth by the year twenty eight pounds and no more: And the ſame Silas farther ſays, that at the time of his admiſſion to the tenements aforeſaid, with the appurtenances, to wit, at the ſaid court of the manor held within that manor on the ſaid twenty-firſt day of April, in the firſt year aboveſaid, he was ready, and offered to pay to the ſaid W. then one of the lords of that manor, being then and there preſent in his own proper perſon, ſo much money as the ſaid cuſtomary tenements were worth by the year at the time of the admiſſion of him the ſaid Silas to the ſame, to wit, twenty-eight pounds of lawful money of Great Britain; which ſaid twenty-eight pounds the ſaid W. then and there abſolutely refuſed to receive or accept of the ſame Silas; and this he is ready to verify; wherefore as before he prays judgment and his damages, by reaſon of the taking and unjuſt detention of the cattle aforeſaid, to be adjudged to him, &c.

And the ſaid W. ſays, that the plea of the ſaid Silas above in rejoining pleaded, and the matter in the ſame contained, are not ſufficient in law to preclude him the ſaid W. from having his avowry and cogniz ce aforeſaid, and that he to that plea in manner and form aforeſaid pleaded, hath no neceſſity, nor is by the law of the land obliged to anſwer; and this he is ready to verify; wherefore for want of a ſufficient plea in this behalf, the ſame W. as before, prays judgment and a return of the cattle aforeſaid, together with his damages, coſts, and expences by him about his ſuit in this behalf ſuſtained, according to the form of the ſtatute in ſuch caſe thereof lately made and provided, to be adjudged to him, &c.: And for cauſe of demurrer in law to that plea, the ſame W. according to the form of the ſtatute in ſuch caſe thereof lately made and provided, ſets down, and to the court here expreſſes this cauſe following, to wit, that the value of the lands remain in eſtimation, and the cuſtom aforeſaid by the ſaid Silas above in pleading pretended and alledged, is uncertain, inſufficient, and void of law. Demurrer. The cauſe. 27. Eliz. c. 5. 4. Ann, c. 16.

And the ſaid Silas, for that he hath above alledged ſufficient matter in law in his plea aforeſaid above in rejoining pleaded, to preclude the ſaid W. from having his avowry and cognizance aforeſaid, which he is ready to verify, which ſaid matter the ſaid W. doth not deny, nor thereto in anywiſe anſwer, but altogether refuſes to admit that averment, as before prays judgment and his damages, by reaſon of the taking and unjuſt detention of the cattle aforeſaid, to be adjudged to him, &c.; and becauſe the juſtices here will adviſe themſelves of and upon the premiſes before they give judgment thereon, day therefore is given to the parties aforeſaid here until on the octave of St. Hilary, to hear their judgment thereon, becauſe the ſame juſtices here thereof not yet, &c. on which day here comes as well the ſaid Silas as the ſaid W. by their attornies aforeſaid; and hereupon the premiſes being ſeen, and by the Joinder in demurrer.

the juſtices here more fully underſtood, it ſeems to the ſaid juſtices here, that the ſaid plea of the ſaid Silas above in rejoining pleaded, and the matter in the ſame contained, is ſufficient in law to preclude him the ſaid W. from having his avowry and cognizance aforeſaid, as the ſaid Silas hath above alledged; wherefore the ſaid Silas ought to recover his damages againſt the ſaid W. by reaſon of the taking, and unjuſt detention of the cattle aforeſaid; but it is unknown what damages the ſaid Silas hath ſuſtained by reaſon of the taking and unjuſt detention of the cattle aforeſaid, as for his coſts and charges by him about his ſuit in this behalf ſuſtained, by reaſon of the taking and unjuſt detention of the cattle aforeſaid, the ſheriff is commanded that by the oath of good and lawful men of the county aforeſaid, he diligently enquire what damages the ſaid Silas has ſuſtained, as well by reaſon of the taking and unjuſt detention of the cattle aforeſaid, as for his coſts and charges by him about his ſuit in this behalf ſuſtained, and the inquiſition which he ſhall thereof make, he certify there from the day of Eaſter in fifteen days, under the ſeal, &c. on which day here comes the ſaid Silas, by his attorney aforeſaid; and the ſheriff, to wit, Joſeph Edmunds, eſquire, hath now returned here a certain inquiſition taken before him at Stevenage, in the county aforeſaid, on the fifteenth of April laſt paſt, by the oath of twelve, &c. whereby it is found that the ſaid Silas has ſuſtained damage by reaſon of the taking and unjuſt detention of the cattle aforeſaid, beſides his coſts and charges by him about his ſuit in this behalf expended to fourpence, and for their coſts and charges to ſixpence: therefore it is conſidered that the ſaid Silas do recover againſt the ſaid William his damages aforeſaid to tenpence, by the inquiſition aforeſaid in form aforeſaid found, and alſo nine pounds five ſhillings and twopence to the ſaid Silas at his requeſt, for his coſts and charges aforeſaid by him about his ſuit in this behalf by increaſe adjudged; which ſaid damages in the whole amount to nine pounds ſix ſhillings and the ſaid William, in mercy, &c.

Judgment for the plaintiff.

Inquiry awarded.

This judgment was affirmed on a writ of error.

Avowry as bailiffs, that they took the gelding for an amerciament in the court leet of the city of Carliſle, upon a preſentment that the plaintiff uſed a falſe meaſure, ſetting out the juriſdiction of the corporation for that purpoſe at large.

AND the ſaid John, Robert Nanſon, and Joſeph, by A. B. their attorney, come and defend the wrong and injury, when, &c. and as bailiffs of the mayor, aldermen, bailiffs, and citizens of the city of Carliſle, in the county of Cumberland, well acknowledge the taking of the ſaid gelding in the ſaid place in which, &c. and juſtly, &c.; becauſe they ſay, that the city of Carliſle aforeſaid, in the county of C. aforeſaid, at the ſaid time when, &c. was, and from time whereof the memory of man is not to the contrary, hath been and ſtill is an ancient city, and that the ſaid place in which, &c. now is, and at the ſaid time when, &c. was, and from time whereof the memory of man is not to the contrary, hath been within the city of Carliſle, in the county aforeſaid, and within the juriſdiction of the court leet and view of

of frankpledge hereinafter mentioned: And the ſaid J. R. N. and Joſeph further ſay, that the citizens of the ſaid city, from time whereof the memory of man is not to the contrary, until the twenty-firſt day of July, in the thirteenth year of the reign of Charles the Firſt, late king of England, &c. were an ancient corporation and body corporate in deed, fact, and name, and had been and were confirmed by divers letters-patent of divers late kings and queens of England, at divers times, by divers names of incorporation, to wit, by the name of the citizens of Carliſle, and alſo by the name of the mayor and citizens of the city of Carliſle; on which ſaid twenty-firſt day of July, in the thirteenth year of the reign of the ſaid Charles the Firſt, late king of England, &c. the ſaid citizens of the city of Carliſle were by the ſaid late king, by his letters-patent bearing date at , on the ſame day and year laſt aforeſaid (and which ſaid letters-patent, ſealed with the great ſeal of Great Britain, the ſaid J. R. N. and Joſeph now bring into court here) were duly incorporated by the name of the mayor, aldermen, and bailiffs of the city of Carliſle: And the ſaid J. R. N. and Joſeph further ſay, that the citizens of the ſaid city of Carliſle for the time being, from time whereof the memory of man is not to the contrary, until the ſaid twenty-firſt day of July, in the thirteenth year of the reign of the ſaid late king Charles the Firſt, by their ſeveral names firſt and ſecondly above mentioned reſpectively; and the ſaid mayor, aldermen, bailiffs, and citizens of the ſaid city of Carliſle continually from thenceforth hitherto have had, and have been uſed and accuſtomed to have, and of right ought to have had, and the ſaid mayor, aldermen, bailiffs, and citizens of the ſaid city ſtill of right ought to have a certain court leet and view of frankpledge of all the inhabitants and reſiants within the ſaid city once a year, to wit, within a month next after the feaſt of St. Michael the Archangel, before the mayor and bailiffs of the ſaid city for the time being within the ſaid city yearly to be held: And whereas there now is, and from time whereof the memory of man is not to the contrary, there hath been a certain ancient or laudable cuſtom uſed and approved of within the ſaid city, that whenever the ſaid court leet hath been ſo yearly held as aforeſaid, the ſaid court, together with the preſentments and proceedings therein depending and undetermined, have been, and have been uſed and accuſtomed to be, and of right ought to be adjourned by the mayor and bailiffs of the ſaid city until Eaſter Monday then next following, before the mayor and bailiffs of the ſaid city for the time being within the ſaid city, to be further held: And the ſaid J. R. N. and Joſeph further ſay, that the ſaid Robert Blamire, before the ſaid time when, &c. and alſo before the holding of the court leet hereinafter mentioned, to wit, on, &c. at the pariſh of St. C. in the city of Carliſle, and within the juriſdiction of the ſaid court, in a certain public market then and there held, knowingly, deceitfully, and unlawfully did uſe a certain falſe and deceitful meaſure, as and for a meaſure containing three buſhels, according to the ſtandard

of

of the exchequer, commonly called Wincheſter meaſure, in the ſelling of oats there to the liege ſubjects of our ſaid lord the king, the ſaid meaſure not containing, but being leſs than three buſhels, according to the ſaid ſtandard meaſure, and the ſaid Robert Blamire then and there well knowing the ſaid deceit and oppreſſion of the liege ſubjects of our ſaid lord the king, againſt the form of the ſtatute in ſuch caſe made and provided, and againſt the peace of our lord the now king: And the ſaid J. R. N. and Joſeph further ſay, that afterwards, and before the ſaid time when, &c. to wit, at the court leet and view of frankpledge of our ſovereign lord the now king, holden by adjournment at the Guild-hall in and for the ſaid city, and within the juriſdiction of the ſaid court leet, on Eaſter Monday, the fourth day of April A. D. 1768, before the ſaid J. P. eſquire, then being mayor of the ſaid city, and Robert Jackſon; and the ſaid J. R. N. then being bailiff of the ſaid city, according to the cuſtom there by the oath of twelve free and lawful men within the city aforeſaid, reſiant and inhabitant, and then being in the ſaid court there, charged and ſworn to enquire thoſe things which to the court leet and view of frankpledge belonged, it was then and there in the ſame court preſented (amongſt other things) that the ſaid R. B. had been guilty of uſing falſe meaſure in form aforeſaid, to the common grievance of the king's ſubjects; whereupon it was then and there conſidered in and by the ſaid court there, that the ſaid R. B. ſhould be in mercy, wherefore the ſaid R. B. was then and there for that cauſe at the ſame court by the ſaid jury amerced to the ſum of thirty-nine ſhillings and elevenpence of lawful money of Great Britain, which ſaid amercement by two aſſeſſors, to wit, R. H. and W. H. afferers in the ſame court then and there charged and ſworn, was at the ſame court duly affered to the like ſum of thirty-nine ſhillings and elevenpence; of all which ſaid premiſes the ſaid R. B. afterwards and before the ſaid time when, &c. to wit, on, &c. in the ſaid declaration mentioned, at, &c. had notice, and was then and there required by the ſaid J. R. N. and Joſeph, as bailiffs of the ſaid mayor, aldermen, bailiffs, and citizens of the ſaid city, to pay the ſaid amercement, to do which the ſaid R. B. then and there wholly refuſed; and becauſe the ſaid thirty-nine ſhillings and elevenpence for the ſaid amercement at the ſaid time when, &c. was ſo as aforeſaid due, owing, and in arrear to the ſaid mayor, aldermen, bailiffs, and citizens of the ſaid city, and the ſaid R. B. ſo refuſing to pay the ſame as aforeſaid, the ſaid J. R. N. and Joſeph, as the bailiffs of the ſaid mayor, &c. well acknowledge the taking of the ſaid gelding in the ſaid place in which, &c. being within the ſaid city and juriſdiction of the ſaid court, and juſtly, &c. as and in the name of a diſtreſs for the ſaid amercement ſo as aforeſaid due and owing to the ſaid mayor, &c. which ſaid amercement ſtill remains in arrear and unpaid, &c.

And the ſaid R. B. as to the avowry and cognizance of the ſaid J. R. N. and Joſeph above made, ſaith, that by reaſon of any thing in the ſaid avowry and cognizance contained, they ought not to avow the taking of the ſaid gelding in the ſaid declaration mentioned, in the ſaid place in which, &c. as juſt; becauſe proteſting that the ſaid avowry, and the matters therein contained, are not ſufficient in law for the ſaid J. R. N. and Joſeph to acknowledge as bailiffs of the ſaid mayor, aldermen, bailiffs, and citizens of the city of Carliſle, in the county of Cumberland, the taking the ſaid gelding in the ſaid plea in which, &c. as juſt; to which ſaid cognizance, in manner and form as the ſame is above made, he the ſaid R. B. is not under any neceſſity, nor in any way bound by the law of the realm to make any anſwer; proteſting alſo, that there is not, nor ever was any ſuch cuſtom uſed and approved of in the ſaid city of Carliſle, as the ſaid J. R. N. and Joſeph have above in and by the ſaid cognizance alledged; for plea in bar in this behalf the ſaid R. B. ſays, that true it is that the ſaid city of Carliſle, in the county of Cumberland aforeſaid, at the ſaid time when, &c. and from time whereof the memory of man is not to the contrary, hath been and ſtill is an ancient city, and that the ſaid place in which, &c. now is, and at the ſaid time when, &c. and from time whereof the memory of man is not to the contrary, hath been within the city of C. aforeſaid, in the county aforeſaid, and within the juriſdiction of the court leet and view of frankpledge mentioned in the ſaid cognizance; and that the citizens of the ſaid city, from time whereof, &c. until the twenty-firſt day of July, in the thirteenth year of the reign of Charles the Firſt, late king of England, &c. were an ancient corporation and body corporate in deed, fact, and name, and had been and were confirmed by divers letters-patent of divers late kings and queens of England, at divers times, by divers names of incorporation, to wit, by the name of citizens of the city of C. and alſo by the name of the mayor and citizens of the ſaid city; on which ſaid twenty-firſt day of July, in the ſaid thirteenth year of the reign of the ſaid Charles the Firſt, late king of England, &c. the ſaid citizens of the ſaid city of C. by the ſaid late king, by his ſaid letters-patent mentioned in the ſaid cognizance were duly incorporated by the name of the mayor, aldermen, bailiffs, and citizens of the city of Carliſle aforeſaid, and that the ſaid citizens of the ſaid city of Carliſle for the time being, from time whereof, &c. until the twenty-firſt day of, &c. in the thirteenth, &c. by their ſeveral names firſt and ſecondly above-mentioned reſpectively; and the mayor, aldermen, bailiffs, and citizens of the ſaid city of C. continually from thenceforth hitherto have had, and have uſed and been accuſtomed to have, and of right ought to have had, and the ſaid mayor, &c. ſtill of right ought to have a certain court leet or view of frankpledge, and all things which to a court leet or view of frankpledge belong of all the inhabitants and reſiants within the ſaid city once every year, within one month next after the feaſt of St. Michael the Archangel,

Plea in bar to the laſt avowry, proteſting againſt the inſufficiency of it, and the cuſtom admitting the exiſtence of the corporation, but ſaying that they took the horſe *de injuria*, and without the reſiduc of the cauſe alledged.

angel, before the mayor and bailiffs of the ſaid city for the time being within the ſaid city yearly to be held, as the ſaid J. R. N. and Joſeph have above in their ſaid cognizance alledged; but the ſaid R. B. further ſays, that the ſaid J. R. N. and Joſeph, at the ſaid time when, &c. of their own wrong, and without the reſidue of the cauſe by them above alledged, took the ſaid gelding in the ſaid declaration mentioned in the ſaid place in which, &c. and unjuſtly detained the ſame againſt ſureties and pledges until, &c. in manner and form as the ſaid R. B. hath above complained againſt them; and this, &c.; wherefore inaſmuch as the ſaid J. R. N. and Joſeph have above acknowledged the taking of the ſaid gelding in the ſaid declaration mentioned, in the ſaid place in which, &c. above done, he the ſaid R. B. prays judgment and his damages, &c.

Cognizance as bailiffs (taking ſix pewter diſhes) a diſtreſs for an amerciament, &c.

AND the ſaid J. Collinſon, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to the taking of ſix pewter diſhes, parcel of the ſaid ten pewter diſhes in the ſaid declaration mentioned, ſaith, that he did not take thoſe pewter diſhes as the ſaid E. above complains againſt him; and of this he puts himſelf upon the country, and the ſaid E. doth the like: And as to the taking of four pewter diſhes, reſidue of the ſaid ten pewter diſhes, the aforeſaid J. E. as bailiff of T. S. eſquire, well acknowledges the taking of the ſaid pewter diſhes in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that the ſaid place in which, &c. is, and at the ſaid time when, &c. was a certain meſſuage, with the appurtenances, in the manor of S. in the pariſh and county aforeſaid; and that the ſaid J. S. long before, and at the ſaid time when, &c. was and ſtill is ſeiſed of and in the ſaid manor, with the appurtenances, in his demeſne as of fee, within which ſaid manor there are, and from time, &c. there hath been a large waſte or common called B. Common, parcel of the ſame manor, and alſo as well ſeveral cuſtomary meſſuages and tenements demiſed and demiſeable by the lord of the ſame manor for the time being, at the will of the lord, according to the cuſtom of the ſame manor, by copy of the rolls of the court of the ſaid manor, as divers freehold meſſuages and tenements held of the ſame manor by ſeveral rents and ſervices, parcel of the ſame manor; and the ſeveral tenants of the ſaid freehold meſſuages and tenements, together with the reſpective tenants of the ſaid cuſtomary meſſuages and tenements, and by cuſtom therein for all the time aforeſaid made and approved, have had and have uſed, and been accuſtomed to have common of Turbury in the ſaid waſte or common to be had and taken every year at reaſonable times for their neceſſary fuel, to be burned in their meſſuages, and for all the time aforeſaid have dug, and have uſed to dig peat pots there, for taking of peat out of thoſe peat pots for their neceſſary fuel to be burned in thoſe meſſuages: And the ſaid defendants further ſay, that within the ſaid manor there is, and from time whereof,

whereof, &c. hath been a certain ancient and laudible cuſtom there uſed and approved, to wit, that every perſon ſo digging peat pots in the ſaid waſte or common for the purpoſe aforeſaid, hath uſed and been accuſtomed well and ſufficiently to bed his peat pots there, and to let out the water from thence, and if any perſon hath neglected well and ſufficiently to bed his peat pot there, and to let out the water from thence, then every perſon ſo offending in the premiſes hath been amerced, and hath been accuſtomed to be amerced by the court baron of the ſaid manor, by the homage of the court for ſuch his offence and default, for which ſaid amercement being aſſered by the aſſeerors of that court for the time being, the aforeſaid J. S. and all thoſe whoſe eſtate he hath, and at the ſaid time when, &c. had of and in the ſaid manor, with the appurtenances, for the whole time aforeſaid, by their bailiff of the ſaid manor for the time being, have uſed and been accuſtomed to diſtrain any goods and chattels of ſuch perſons ſo offending found within the ſaid manor; and the ſaid goods and chattels ſo diſtrained within the ſame manor to impound, until the lord of the ſaid manor for the time being hath been fully ſatisfied for ſuch amercement: And the ſaid defendants further ſaith, that the ſaid E. at the ſaid time when, &c. and for the ſpace of one year paſt and more, was and ſtill is tenant of a certain ancient freehold meſſuage and tenement, with the appurtenances ſituate, lying, and being within the manor aforeſaid, and by reaſon thereof having common of Turbary within the aforeſaid waſte or common, for taking of peat out of thoſe peat pots for his neceſſary fuel to be burned in his ſaid meſſuage, but did not well and ſufficiently bed his ſaid peat pots there, nor let out the ſaid water from thence, but neglected ſo to do; thereupon afterwards, at the court baron of the ſaid J. S. of his manor aforeſaid held in and for that manor at S. aforeſaid, on the twenty-third of October in the year aforeſaid, by the homage of that court, to wit, by the oath of M. T. &c. [the names of the homage] then and there being ſworn and charged to enquire of all articles enquireable at that court, it was preſented that the ſaid E. had not well and ſufficiently bedded his peat pots, and let out the water thereof, for which ſaid offence the ſaid E. according to the cuſtom aforeſaid, was by the ſaid homage then and there concerned to three ſhillings and fourpence, which ſaid amercement was by R. H. and J. W. then aſſeerers of the ſaid court thereto thence and there duly elected and ſworn, aſſeered, and confirmed to the ſaid three quarters, whereof the ſaid E. afterwards, to wit, on the ſame day and year laſt-mentioned, had notice, &c at S. aforeſaid, and was then and there required by the ſaid defendant, then bailiff of the ſaid J. C. of his manor, to pay to the ſaid J. S. aforeſaid three ſhillings and fourpence for the amercement aforeſaid, which the ſaid E. then and there refuſed to pay to the ſaid J. S.; and becauſe the ſaid amercement of three ſhillings and fourpence at the ſaid time when, &c. was in arrear and unpaid to the ſaid J. S. the aforeſaid defendant, as bailiff of the ſaid J. S. of his manor aforeſaid, by command of the ſaid J. S. well acknowledges the taking of

11. Rep. 45. Cro. Jac. 342. Ld. Raym. 71.

the ſaid four pewter diſhes, reſidue of the ſaid ten pewter diſhes the ſaid declaration mentioned in the aforeſaid meſſuage in which, &c. being within the ſaid manor, and juſtly, &c. for and in the name of a diſtreſs for the ſaid three ſhillings and four-pence of the amercement aforeſaid, ſo being in arrear and unpaid, &c.; and this, &c.; wherefore, &c. E. BOOTLE.

Plea in bar, that defendant *de injuria*, &c.

And the ſaid Edward, as to the ſaid cognizance, &c. ſays, that the ſaid defendant ought not to acknowledge, &c. becauſe proteſting that cognizance, &c. are inſufficient; ſays, that defendant took the ſaid four pewter diſhes of his own wrong *modo et forma in declaration*; without this [traverſe of the cuſtom alledged to bed the peat pots, and the amercement for the neglect] *modo et forma*, &c.; and this, &c.; wherefore, &c. [2d Plea, *de injuria*, and traverſe of the premiſes to diſtrain; 3d Plea, that defendant ought not to acknowledge, &c. becauſe he ſays, that he did bed, &c. and let out water, &c.]; and this he prays may be enquired of by the county, &c.

AVOWRIES, &c. UNDER JUDGMENT

Avowry by leſſee of tenant, by for damage feaſant.

MOORE *againſt* DREWRY.

AND the ſaid W. by G. L. his attorney, comes and defends the force and injury, when, &c. and well avows the taking of the cattle aforeſaid, in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that the ſame places in which the taking of the cattle aforeſaid is ſuppoſed to be contain at the ſaid time when the taking of thoſe cattle is ſuppoſed to be, and did contain in themſelves together ninety acres of paſture, with the appurtenances, in Market Stanton aforeſaid; and that long before the ſaid time when, &c. to wit, in Michaelmas term, in the fourteenth year of the reign of the lord Charles the Second, late king of England, &c. the ſaid Gabriel Leech, in the court of the ſame late king, before the ſaid late king himſelf, (the ſame court then being at Weſtminſter, in the county of Middleſex), by the conſideration of the ſame court, recovered againſt one William Leech, gentleman, one thouſand one hundred pounds debt, and twenty-one ſhillings for his damages which he had ſuſtained, as well by reaſon of the detention of that debt as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid William Leech is convicted, as by the record and proceedings thereof in the court of the lord the now king, before the king himſelf here, to wit, at Weſtminſter aforeſaid remaining more fully is manifeſt and appears: And the ſaid W. Drewry further ſays, that after the rendition of that judgment, to wit, on the twenty-ſecond of January, in the third year of the reign of the lord James the Second, late king of England, &c. the ſaid W. Leech was ſeiſed of the ſaid places in which, &c.

Judgment.

Seiſin.

among

among others, in his demeſne as of freehold, for the term of his life; and being ſo thereof ſeiſed, and the ſame judgment being in its full force and ſtrength, not paid or ſatisfied, it was in ſuch manner thereon proceeded, that afterwards, to wit, in Hilary term, in the third and fourth year of the reign of the ſaid late king James the Second, in the court of the ſame late king, before the late king himſelf, it was conſidered by the ſame court then here, to wit, at Weſtminſter aforeſaid, that the ſaid Gabriel ſhould have execution againſt the ſaid W. Leech for the debt and damages aforeſaid, by the default of him the ſaid W. Leech, as by the record and proceedings thereof in the court here remaining, more fully is manifeſt and appears; and afterwards, to wit, on the fourth day of July, in the fourth year of the reign of the ſaid late king James the Second aboveſaid, in the court of the ſaid late king, before the late king himſelf then here, to wit, at Weſtminſter aforeſaid, came the ſaid Gabriel in his proper perſon, and by the ſtatute in ſuch caſe lately made and provided, choſe to be delivered to him all the goods and chattels of the ſaid W. Leech, except his oxen and beaſts of his plough, and alſo the one half of all the lands and tenements of the ſaid W. Leech, to hold to himſelf the goods and chattels aforeſaid, as his own proper goods and chattels, and alſo to hold one half aforeſaid as his freehold to him and his aſſigns, according to the form of the ſtatute aforeſaid, until he ſhould thereout fully levy the debt and damages aforeſaid; wherefore the ſheriff of the county of Lincoln was then and there by the ſame court commanded, that he the ſaid ſheriff all the goods and chattels of the ſaid W. Leech, except his oxen and beaſts of his plough, and alſo the one half of all the lands and tenements of the ſame William Leech in his bailiwick, of which the ſame W. Leech, at the ſaid time of the rendition of the principal judgment aforeſaid, or ever after was ſeiſed in his bailiwick, ſhould without delay cauſe to be delivered to the ſaid Gabriel by a reaſonable price and extent, to hold to himſelf the goods and chattels aforeſaid as his own proper goods and chattels, and alſo the one half of the lands and tenements aforeſaid, as his freehold to him and his aſſigns, according to the form of the ſtatute aforeſaid, until he ſhould thereout levy the debt and damages aforeſaid, and how the ſame ſheriff ſhould execute that writ he ſhould certify to the ſame late king James the Second here, to wit, at Weſtminſter aforeſaid, on Saturday next after the octave of St. Martin then next enſuing, under the ſeal, &c. and the ſeals of them by whoſe oath he ſhould make that extent and appraiſement, then and there remitting that writ to the ſame late king; on which day, before the late king himſelf here, to wit, at Weſtminſter aforeſaid, came the ſaid Gabriel in his own proper perſon, and the then ſheriff of Lincoln, to wit, Anthony Eyre, eſquire, to the ſame court then here, returned a certain inquiſition before him at L. in the ſame county of Lincoln, on the fifteenth day of November, in the fourth year of the reign of the late king James the Second, by the oath of twelve good and lawful men of that county taken, whereby it is found, that the ſaid W. Leech, after the ten-

Execution awarded on *ſcire facias*

Elegit prayed.

13. Eliz. c. 18.

The inquiſition returned.

dition of the principal judgment aforesaid, was seised of and in a certain close of land called the Low Pasture, and also of and in the said places in which, &c. likewise called the Low Pasture and Colehill, containing together by estimation one hundred and forty-six acres, the said close called the Low Pasture being one hundred and twenty acres, parcel thereof, of the clear yearly value in all issues, besides reprises, forty-eight pounds, and of and in a close, &c., and that those premises are situate, lying, and being in Market Stanton aforesaid, and of and in a yearly rent of ten pounds, issuing out of and from certain lands in Sutton in the Marsh, in the county aforesaid, then in the tenure or occupation of one R. V. or his assigns, and also of and in a yearly rent of thirty pounds, issuing out of and from certain lands in F. in the county aforesaid, then in the tenure and occupation of R. C. or his assigns, in his demesne as of freehold for the term of his life; and that the said places in which, &c. and the said close called C. and twenty pounds of the said thirty pounds, issuing out of and from the said lands in F. were a true and equal half of all and singular the lands and tenements aforesaid; and that the same sheriff the same half aforesaid, on the day of the caption of the inquisition aforesaid, to the said Gabriel Leech, by a reasonable price and extent had, caused to be delivered, to hold to him and his assigns as his freehold, according to the form of the statute aforesaid, until he should thereout fully levy the debt and damages aforesaid, as that writ commanded and required: And by the inquisition aforesaid it was further found, that the same W. Leech, at the time of the rendition of the principal judgment aforesaid had not, nor on the day of the caption of the inquisition aforesaid had any goods or chattels, or any other lands or tenements in the county aforesaid, to the knowledge of the jurors of that inquisition, as by the record and proceedings thereof in the court of the lord the now king, before the king himself, remaining, more fully is manifest and appears; whereby the said Gabriel into the said places in which, &c. with the appurtenances, among others, entered and was thereof possessed; and being so thereof possessed, the same Gabriel afterwards, and before the said time when, &c. to wit, on the second day of May, in the year of the Lord 1695, at M. S. aforesaid, demised and to farm let to the said William Drewry, the said places in which, &c. with the appurtenances, among others, to have and to hold to the said William Drewry, from the first day of the same month of May unto the end and term of one year thence next ensuing and fully to be complete and ended; by virtue of which demise the same William Drewry, into the said place in which, &c. with the appurtenances, &c. among others, entered and was thereof possessed until the end and expiration of that term: And because the cattle aforesaid, at the said time when, &c. were in the said place in which, &c. to wit, two rams, one hundred wether sheep, and one hundred ewe sheep, parcel thereof, being in the said place called L. and eighteen wether sheep, and thirty ewe sheep, the residue thereof, being in the said place called C. eating up the grass there then growing, and doing damage there,

A moiety delivered.

Entry of tenant by *elegit* and demise to the avowant.

Distress.

there, the ſame William Drewry well avows the taking of the cattle aforeſaid in the ſaid places in which, &c. and juſtly, &c. ſo doing damage there; with this, that the ſaid William Drewry will verify that the ſaid William Leech is yet ſurviving and in full life, to wit, at M. S. aforeſaid, and that the debt and damages aforeſaid to the ſaid W. L. are yet unſatisfied, &c.

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WILLIS *againſt* DEN. } KENT, to wit Thomas Willis, baronet, lately in the county court of A. B. eſquire, ſheriff of the county aforeſaid, held at Maidſtone in the county aforeſaid, complained againſt C. D. in a plea of treſpaſs; which ſaid plea, at the petition of the ſaid T. W. was brought here at this day, to wit, from the day of the Holy Trinity, &c. by the writ of the lord the king of *recordari facias loquelam*; and now on this day come as well the ſaid T. W. by S. K. his attorney, as the ſaid C. D. by E. F. his attorney; and hereupon the ſaid T. W. by his attorney aforeſaid, complains that, &c.

Count on a *recordari facias* in order to have coſts, where the damage is under 40s.

22. & 23 C. 1 Ra. Ent 571 1. Brownl 18.

If the defendant in the Count pleads freehold, and the plaintiff removes the plaint without cauſe ſhewn in the end of the writ, and the plaint only is returned, and not the plea, (which is neceſſary to be done, becauſe the court ought not to take cognizance of a plea of forty ſhillings, Quere, How to declare? "To wit, which ſaid plaint at the petition of the ſaid plaintiff, becauſe the defendant in the ſame plaint in the court aforeſaid claimed freehold, is brought here, &c."

Lambert and Thurſton, 1. W. & M. Treſpaſs *quare clauſum fregit* was removed by *recordari*, where the plaintiff declared to his damage thirty ſhillings. Defendant demurred becauſe the court had not juriſdiction of the cauſe where damages are under forty ſhillings. And it was urged for the plaintiff, that the plaintiff had removed this cauſe, becauſe the defendant had pleaded freehold, and ſo it is not triable in the county court. Co. Lit. 128. and 2. Inſt.

AVOWRIES, &c. FOR RENTS, SERVICES, AND CUSTOMS.

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GEORGE the Third, &c. To the Sheriff of Kent, greeting: Whereas P. J. was ſummoned to be in our court before us, to anſwer J. G. of a plea wherefore he took the cattle, goods, and chattels of him the ſaid J. G. and them unjuſtly detained againſt ſureties and pledges; and whereupon the ſaid J. G. by A. B. his attorney, complained that the ſaid P. J. on, &c. at, &c. in, &c. in a certain place there called New Croſs, ſeized and took the cattle, goods, and chattels of the ſaid J. G. to wit, &c. [ſet out the goods] there then found, of the value of two hundred pounds, and them unjuſtly detained againſt ſureties and pledges, &c.; whereupon the ſaid John ſaith that he was injured, and had ſuſtained damage to the value of two hundred pounds; and therefore he brought his ſuit, &c.

Writ of enq under the 18. Charles upon a judgment on a murder to cognizance rent in arrea

Cognizance as bailiff of the corporation of the city of London, the governors of Bridewell and St. Thomas's Hospitals, for rent in arrear under a demise by them to the plaintiff, of a day quarter-

And thereupon the said P. J. by A. B. his attorney, comes and defends the wrong and injury, when, &c and for cognizance in this behalf he the said P J. as bailiff of the mayor, commonalty, and citizens of the city of London, governors of the possessions, revenues, and goods of the hospitals of Edward the Sixth, king of England, of Christ, Bridewell, and St. Thomas the Apostle, well acknowledges the taking of the said cattle, goods, and chattels, in the said declaration mentioned, in the said place in which, &c. and justly, &c.; because he says, that he took the said cattle, goods, and chattels, at the said time when, &c. in and upon a certain messuage, and in and upon certain lands and premises, situate, lying, and being at the said place called New Cross, in the said declaration mentioned, and in which the said cattle, goods, and chattels were thereby alledged to have been taken, and that the said J. G. continually for a long space of time, to wit, for one year and an half next before and ending and ended on the feast day of , A.D. 1785, and from thence until and at the said time when, &c. enjoyed the said messuage, lands, and premises in which, &c. (*amongst other tenements*), with the appurtenances, as tenant thereof to the said mayor, commonalty, and citizens, governors aforesaid, by virtue of a certain demise thereof by them theretofore made, at the yearly rent of seventy-five pounds, payable quarterly, that is to say, the feast of, &c. &c. by even and equal portions, *and during all that time held the same as tenant thereof to the said mayor, commonalty, and citizens, governors aforesaid*, and that because one hundred and twelve pounds ten shillings of the said rent for one year and the half of another year of the said demise, ending and ended on the said feast day of , in the year 1785, on that day, and from thence until and at the said time when, &c. was in arrear and unpaid to the said mayor, commonalty, and citizens, governors aforesaid [redacted] said P. J. as bailiff of the said mayor, &c. well [redacted] taking of the said cattle, goods, and chattels in, on, and upon the said messuage or dwelling-house, lands, and premises, at and in the said place in which, &c. called New Cross, and justly, &c. for and in the name of a distress for the said rent so due, in arrear, and unpaid to the said mayor, &c. which said rent then remained due and unpaid to them; and this, &c.; wherefore, &c. and a return of the said cattle, goods, and chattels, together with his damages, costs, and charges, according to the form of the statute in such case made and provided, to be adjudged to him, &c.: And for further cognizance, &c. [like the preceding one, only making *M. B.* tenant instead of the plaintiff, and omitting the words in Italic. A third cognizance, differing from the first only by defendant's stating himself to be a bailiff to M. B. instead of the governors; then followed a general demurrer to the cognizance; joinder in demurrer, and continuance to the day mentioned in the rule for a *concilium*] On which day, before us at Westminster, came the parties aforesaid, by their attornies aforesaid, whereupon all and singular the premises being seen, and by our said court before us fully understood, and mature deliberation being thereon had

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Cognizance, for rent in arrear under a demise by them to another person.

Judgment, that the cognizance was good.

had, it was conſidered that the cognizance of him the ſaid P. J. by him above made in manner and form as the ſame was above made, and the matters therein contained, were ſufficient in law for him the ſaid P. J. to acknowledge the taking of the ſaid cattle, goods, and chattels in the ſaid place in which, &c. to be juſt as appears to us of record: And whereas the ſaid P. J. hath prayed our writ to enquire of the ſum in arrear of the rent aforeſaid, and the value of the diſtreſs aforeſaid to be granted to him, according to the form of the ſtatute in ſuch caſe made and provided; therefore we command you, that according to the form of the ſtatute in ſuch made and provided, by the oath of twelve good and lawful men of your county, you diligently enquire how much of the yearly rent aforeſaid, at the ſaid time of taking and diſtraining of the cattle, goods, and chattels aforeſaid, was in arrear and unpaid, and how much the cattle, goods, and chattels aforeſaid, ſo as aforeſaid taken and diſtrained, were worth, according to the true value of the ſame; and the inquiſition which you ſhall thereupon take you ſend to us in five weeks from the day of Eaſter wheresoever we ſhall then be in England, under your ſeal and the ſeals of thoſe by whoſe oath you ſhall take that inquiſition, together with this writ. Witneſs, &c.

Writ to enquire how much rent in arrear, and the value of the diſtreſs.

I am of opinion that the within writ of enquiry will operate as a *ſupſedeas* to a *writ of inquiry*, and conſequently preclude the avowant from proceeding againſt the bail; for they are only liable upon the default of the plaintiff in making a *rate* of the *ſpecific goods* diſtrained upon, which he is not bound to do, the avowant having elected to proceed under the ſtatute 18. Cha. 2. c. 7. and not at common law, by which he would be entitled to the writ of *retorno habendo*, and upon return of *elongata* be in a ſituation to proceed againſt the bail; but under the ſtatute the judgment is to recover the value of the goods diſtrained againſt the plaintiff himſelf by virtue of the common proceſſes of execution, and therefore he is entitled to take the goods notwithſtanding the awarding of *retorno habendo*, according to the doctrine laid down in Cooper *v.* Sherbrooke, 2. Wilſ. 117. and the reaſoning in Pratt *v.* Hutlidge, 1 Salk. 95 where a writ of ſecond deliverance is held not to be a *ſupſedeas* to an enquiry under the ſtatute 21. Hen. 8. c. 19. becauſe the damages aſſeſſed by ſuch enquiry were not the damages avowed, but merely ſuch as the avowant has ſuſtained by the expence and trouble attending the making of the diſtreſs, and its being withholden from him; but the aſſeſſment, made by the enquiry in the preſent caſe, is of the very thing avowed for, and the avowant has a judgment againſt the party to recover the value of it, and therefore it ſeems but reaſonable that the goods ſhould be retained by him [redacted]

As to any deficiency in the value of them, the 4th ſection of the ſtatute under which the proceedings have been had provide for this caſe by giving a right to make a ſecond diſtreſs for ſuch deficiency.

Notwithſtanding what is above obſerved, it may be worth while in caſe there be no chance of obtaining the rent from the principal, to riſk entering up the judgment as at common law, without taking any notice of the enquiry, and then to iſſue a *retorno habendo* to warrant future proceedings againſt the bail if they are reſponſible perſons.

V. LAWES.

DECLARATION in replevin, for ſeizing a quantity of hay, one waggon, ſeveral veſſels with ſome cyder in them, and five ſheep.

And the ſaid Thomas and John, by A. B. their attorney, come and defend the force and injury, when, &c. and the ſaid Thomas in

Avowry and cognizance, for rent in arrear on demiſe.

in his own right well avows, and the ſaid John, as bailiff of the ſaid Thomas, well acknowledges the taking of the ſaid cattle, goods, and chattels, in the ſaid place in which, &c. and juſtly, &c.; becauſe they ſay, that the ſaid plaintiff continually from and after the feaſt of the birth of Our Lord Chriſt, A. D. 1773, until and at the ſaid time when, &c. enjoyed the ſaid places in which, &c. and during all that time held the ſame, together with other premiſes of the ſaid Thomas, as his tenant thereof, by virtue of and under a demiſe thereof to him made by the ſaid Thomas, at the yearly rent of fifty-two pounds, payable at the feaſt of, &c. by even and equal portions; and becauſe twenty-ſix pounds of the rent aforeſaid, due and payable by the ſaid plaintiff to the ſaid defendant for half a year, ending on the ſaid feaſt of, &c. A. D. 1774, at that feaſt in that year, and alſo at the time of the taking of the ſaid cattle, goods, and chattels, were due, in arrear, and unpaid to the ſaid Thomas, he the ſaid Thomas in his own right well avows, and the ſaid John, as bailiff of the ſaid Thomas, well acknowledges the taking of the ſaid cattle, goods, and chattels, in the ſaid places in which, &c. and juſtly, &c. for and in the name of a diſtreſs for the ſaid rent ſo due, in arrear, and unpaid to the ſaid Thomas as aforeſaid; and the ſaid rent ſtill remains due and unpaid; and this, &c.; wherefore, &c. and a return of the cattle, goods, and chattels, together with their damages, coſts, and charges in this behalf, according to the form of the ſtatute in that caſe made and provided, to be adjudged to them, &c. W. BALDWIN.

Plea in bar, that plaintiff, after ſaid rent became due, and before the taking of the diſtreſs, tendered the rent.

And the ſaid plaintiff, as to the ſaid avowry and cognizance of the ſaid defendants by them above made, ſays, by reaſon of any thing therein contained, the ſaid Thomas in his own right ought not to avow, and the ſaid as bailiff of the ſaid Thomas, ought not to acknowledge the taking of the ſaid cattle, goods, and chattels, in the ſaid place in which, &c. to be juſt; becauſe the ſaid plaintiff ſaith, that he the ſaid plaintiff, after the ſaid feaſt of, &c. A. D. 1774, and before the taking of the ſaid cattle, goods, and chattels, in the ſaid place in which, &c. to wit, on, &c. at, &c. tendered and offered to pay unto the ſaid Thomas the ſaid ſum of twenty-ſix pounds of the rent aforeſaid, which ſum of twenty-ſix pounds, he the ſaid Thomas then and there refuſed to receive and accept: And the ſaid plaintiff further ſaith, that he the ſaid plaintiff always from the ſaid twenty-ſixth of December until the time of taking the ſaid diſtreſs, hath been ready and willing to pay to the ſaid Thomas the ſaid ſum of twenty-ſix pounds, to wit, at, &c. and that before the time of taking the ſaid diſtreſs no requeſt or demand was made by the ſaid Thomas, or any other perſon on his behalf of the ſaid rent or any part thereof, of him the ſaid plaintiff; and this he is ready to verify; wherefore inaſmuch as the ſaid Thomas in his own right hath above avowed, and the ſaid John, as bailiff of the ſaid Thomas, hath above acknowledged, the taking of the ſaid cattle, goods, and chattels, in the ſaid place in which, &c. he the ſaid plaintiff prays judgment and his damages,

by

by reaſon of the taking and unjuſt detaining thereof, to be adjudged to him, &c. F. BULLER.

And the ſaid defendants ſay, that they, by reaſon of any thing by the ſaid plaintiff above in pleading alledged, ought not to be barred from avowing and acknowledging the taking of the ſaid cattle, goods, and chattles, in the ſaid place in which, &c. to be juſt; becauſe they ſay, that the ſaid plaintiff did not tender and offer to pay to the ſaid Thomas the ſaid ſum of twenty ſix pounds of the rent aforeſaid, in manner and form as the ſaid plaintiff hath above in pleading alledged; and of this they put themſelves upon the country. Replication, taking iſſue on the tender.

Michaelmas Term, 21. Geo. III.

DECLARATION in replevin for taking houſehold furniture.

And the ſaid Charles, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and well avows the taking of the ſaid goods and chattels in the ſaid declaration mentioned, in the ſaid dwelling-houſe in which, &c.; becauſe he ſays, that the ſaid Richard, for one whole year next before and ending on the twenty-fifth of March 1780, and from thence until and at the ſaid time when, &c. held and enjoyed the ſaid dwelling-houſe in which, &c. with the appurtenances, as tenant thereof to the ſaid Charles under a demiſe thereof theretofore made by the ſaid Charles to the ſaid Richard, at the yearly rent of five ſhillings of lawful money of Great Britain; and becauſe five ſhillings of the rent aforeſaid, due and payable by the ſaid Richard to the ſaid Charles for the ſaid one year ending on the twenty-fifth of March in the year aforeſaid, on that day, in that year, and alſo at the ſaid time when, &c. were in arrear and unpaid to the ſaid Charles, he the ſaid Charles well avows the taking of the ſaid goods and chattels in the ſaid declaration mentioned, in the ſaid dwelling-houſe in which, &c. and juſtly, &c. for and in the name of a diſtreſs for the ſaid rent ſo being due, in arrear, and unpaid to the ſaid Charles, as aforeſaid; and this, &c.; wherefore, &c. and a return of the ſaid goods and chattels, together with his damages, coſts, and charges in this behalf, according to the form of the ſtatute, to be adjudged to him, &c. *Drawn by* MR. CROMPTON. Avowry for rent.

And the ſaid Richard, as to the ſaid avowry of the ſaid Charles by him above made, ſays, that he, for any thing in the ſaid avowry alledged, ought not to avow the taking the ſaid goods and chattels in the ſaid declaration mentioned, in the ſaid place in which, &c. as juſt; becauſe he ſays, that the ſaid Charles, at the ſaid time when, &c. of his own wrong took the ſaid goods and chattels in the ſaid place in which, &c. and unjuſtly detained the ſame againſt ſureties and pledges until, &c. in manner and form as the Plea in bar *injuria ſua* and traverſe the demiſe.

Traverſe. the ſaid Richard hath above complained againſt the ſaid Charles; without this, that the ſaid Richard, for one whole year next before and ending on the twenty-fifth of March 1780, and from thence until and at the ſaid time when, &c. held and enjoyed the ſaid dwelling-houſe in which, &c. with the appurtenances, as tenant thereof to the ſaid Charles, under a demiſe thereof thentofore made by the ſaid Charles to the ſaid Richard, at the yearly rent of five ſhillings of, &c. in manner and form as the ſaid Charles hath in the ſaid avowry alledged; and this, &c.; wherefore inaſmuch as the ſaid Charles hath above acknowledged the taking of the ſaid goods and chattels in the ſaid place in which, &c. he the ſaid Richard prays judgment, and a return of the ſaid goods and chattels, together with his damages by reaſon of the taking and unjuſtly detaining thereof, to be adjudged to him.

THO. WALKER.

Replication king iſſue traverſe. And the ſaid Charles, as to the ſaid plea of the ſaid Richard by him above pleaded in bar to the ſaid avowry of the ſaid Charles by him made, ſays, that the ſaid Charles, by any thing in that plea alledged, ought not to be barred from having and maintaining his ſaid avowry; becauſe he the ſaid Charles, as before, ſays, that the ſaid Richard, during the time in the ſaid avowry mentioned, held and enjoyed the ſaid dwelling-houſe in which, &c. with the appurtenances, as tenant thereof to the ſaid Charles under a demiſe thereof made to the ſaid Richard at and under the ſaid yearly rent payable as in the ſaid avowry is mentioned; and of this the ſaid Charles puts himſelf upon the country, &c.

Drawn by MR. CROMPTON.

DECLARATION in replevin, for taking goods and chattels,

Ist avowry, for four year's rent of *locus in quo* from one J. W. who was defendant's tenant; 2d avowry, for two year's rent in arrear from J. W. before he became a bankrupt, and from plaintiff as his aſſignees after his bankruptcy.

And the ſaid Charles Smith, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and well avows the taking of the ſaid goods and chattels in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that one James Wilſon, continually from and after the feaſt of the Annunciation of the Bleſſed Virgin Mary, in the year of Our Lord 1774, until and upon the feaſt of St. Michael the Archangel 1778, and from thence until and at the ſaid time when, &c. enjoyed a certain meſſuage, with the appurtenances, in Mill-ſtreet, in the pariſh of St. George, Hanover-ſquare, in the ſaid county of Middleſex, being in the ſaid place in which, &c. and during all that time was tenant thereof to the ſaid Charles under and by virtue of a certain demiſe to him the ſaid James Wilſon thereof made by the ſaid Charles, at and under the yearly rent of ſixty pounds payable half-yearly at the feaſt of St. Michael and the Annunciation of the Bleſſed Virgin Mary in each and every year during that time, by even and equal portions; and becauſe two hundred and ſeventy pounds of the rent aforeſaid for four years and the half of a year, commencing

ing on the ſaid feaſt of the Bleſſed Virgin Mary 1774, and ending on the feaſt of St. Michael the Archangel 1778, at that feaſt in the year laſt aforeſaid, and alſo at the ſaid time when, &c. were in arrear and unpaid from the ſaid James Wilſon to the ſaid Charles, he the ſaid Charles well avows the taking of the ſaid goods and chattels in the ſaid meſſuage, in the ſaid place in which, &c. and juſtly, &c. as a diſtreſs for the ſaid two hundred and ſeventy pounds of the rent aforeſaid ſo then being in arrear and unpaid to the ſaid Charles; and this, &c.; wherefore he prays judgment, and a return of the ſaid goods and chattels, together with his damages, coſts, and charges, according to the form of the ſtatute, &c. to be adjudged to him, &c.: And for further avowry in this behalf, the ſaid Charles, by leave, &c. well avows the taking of the ſaid goods and chattels in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that one James Wilſon, before he became a bankrupt, and afterwards, the ſaid Bernard Holbrook and James Willett, aſſignees of the eſtate and effects of the ſaid James Wilſon, being a bankrupt reſpectively, from and after the feaſt of the Annunciation of the Bleſſed Virgin Mary 1774, until and upon the feaſt of St. Michael the Archangel in the year 1778, and from thence until and at the ſaid time when, &c. enjoyed a certain meſſuage, with the appurtenances, in Mill-ſtreet, in the pariſh of St. George, Hanover ſquare, in the ſaid county of Middleſex, being the ſaid place in which, &c. and during that time were tenants thereof reſpectively to the ſaid Charles, under and by virtue of a certain demiſe thereof theretofore made by him the ſaid Charles to him the ſaid James Wilſon, before he became a bankrupt, at the yearly rent of ſixty pounds payable half yearly at the feaſt of St. Michael the Archangel and the Annunciation of the Bleſſed Virgin Mary by even and equal portions; and becauſe two hundred and ſeventy pounds of the rent aforeſaid for four years and a half of a year, commencing from the ſaid feaſt of the Annunciation, &c. and ending on the feaſt of St. Michael the Archangel 1778, at that feaſt in the year laſt aforeſaid, and alſo at the ſaid time when, &c. were in arrear and unpaid to the ſaid Charles, he the ſaid Charles well avows the taking of the ſaid goods and chattels in the ſaid meſſuage, in the ſaid place in which, &c. and juſtly, &c. as a diſtreſs for the ſaid two hundred and ſeventy pounds of the rent laſt aforeſaid, ſo being in arrear and unpaid as laſt aforeſaid, and which ſaid laſt-mentioned rent ſtill is in arrear and unpaid to the ſaid Charles; and this, &c.; wherefore, &c. GEO. WOOD.

Plea in bar to the firſt avowry *de injuria ſua*, and traverſe of J. W.'s enjoying the premiſes.

And the ſaid Bernard and James Willett ſay, that the ſaid Charles, by reaſon of any thing by him in his ſaid firſt avowry above alledged, ought not to avow the taking of the ſaid goods and chattels in the ſaid place in which, &c. to be juſt; becauſe they ſay, that the ſaid Charles, at the ſaid time when, &c. of his own wrong, took the ſaid goods and chattels in the ſaid place in which, &c. and unjuſtly detained the ſame againſt gages and pledges

To 2d avowry, *de injuria ſua*, and a like traverſe.

pledges until, &c. in manner and form as the ſaid Bernard and James Willett have above thereof complained againſt him; without this, that the ſaid James Wilſon in the ſaid firſt avowry mentioned, during the ſaid time in the ſaid firſt avowry mentioned, until and at the ſame time when, &c. enjoyed the ſaid meſſuage, with the appurtenances, in the ſaid place in which, &c. as tenant thereof to the ſaid Charles, at and under the ſaid yearly rent of ſixty pounds, payable as in the firſt avowry is mentioned, as the ſaid Charles hath in his ſaid firſt avowry above alledged; and this they the ſaid Bernard and James are ready to verify; wherefore inaſmuch as the ſaid Charles hath above avowed the taking of the ſaid goods and chattels in the ſaid place in which, &c. they the ſaid Bernard and James pray judgment and their damages, by reaſon of the unjuſt taking and detaining thereof, to be adjudged to them, &c.: And the ſaid Bernard and James, as to the ſaid avowry by the ſaid Charles ſecondly above made, ſay, that the ſaid Charles, by reaſon of any thing in that plea alledged, ought not to avow the taking of the ſaid goods and chattels in the ſaid place in which, &c. to be juſt; becauſe they ſay, that the ſaid Charles, at the ſaid time when, &c. of his own wrong took the ſaid goods and chattels in the ſaid place in which, &c. and unjuſtly detained the ſame againſt ſureties and pledges until, &c. in manner and form as the ſaid Bernard and James have above thereof complained againſt him; without this, that the ſaid James Wilſon, before he became a bankrupt, and afterwards, the ſaid Bernard and James Willett, as aſſignees aforeſaid during the ſaid time in the ſaid ſecond avowry mentioned until and at the ſaid time when, &c. reſpectively enjoyed the ſaid meſſuage, with the appurtenances, in the ſaid place in which, &c. at and under the ſaid yearly rent of ſixty pounds, payable as in the ſaid ſecond avowry is mentioned, as the ſaid Charles hath in that avowry alledged; wherefore inaſmuch as the ſaid Charles hath above avowed the taking of the ſaid goods and chattels in the ſaid place in which, &c. they the ſaid Bernard and James pray judgment and their damages, by reaſon of the unjuſt taking and detaining thereof, to be adjudged to them, &c. THO. WALKER.

Replication, iſſue on traverſe

And the ſaid Charles, as to the ſaid plea of the ſaid Bernard and James by them above made to the ſaid firſt avowry of the ſaid Charles as before, ſays, that the ſaid James Wilſon in the ſaid firſt avowry mentioned, during the ſaid time in the ſaid firſt avowry mentioned, until and at the ſaid time when, &c. enjoyed the ſaid meſſuage, with the appurtenances, in the ſaid place in which, &c. as tenant thereof to the ſaid Charles, at and under the ſaid yearly rent of ſixty pounds, payable as in the ſaid firſt avowry is mentioned, as the ſaid Charles hath in his ſaid avowry above alledged; and of this the ſaid Charles puts himſelf upon the country, &c. and the ſaid Bernard and James do ſo likewiſe: And the ſaid Charles, as to the ſaid plea of the ſaid Bernard and James by them above made to the ſaid ſecond avowry of the ſaid Charles as before, ſays, that the ſaid James Wilſon, before he became a bankrupt,

bankrupt, and afterwards, the ſaid Bernard and James Willet, as aſſignees as aforeſaid during the ſaid time in the ſaid ſecond avowry mentioned, until and at the ſaid time when, &c. reſpectively enjoyed the ſaid meſſuage, with the appurtenances, in the ſaid place in which, &c. as tenants thereof reſpectively to the ſaid Charles, at and under the ſaid yearly rent of ſixty pounds, payable as in the ſaid ſecond avowry is mentioned, as the ſaid Charles hath in that avowry alledged; and of this the ſaid Charles puts himſelf upon the country, &c. and the ſaid Bernard and James Willett do ſo likewiſe, therefore, &c. GEO. WOOD.

Declaration in replevin for ſeizing cattle, &c.

NORTHAMPTONSHIRE, to wit. John Shell was ſummoned to anſwer Elizabeth Harris in a plea, wherefore he took the cattle, goods, and chattels of the ſaid Elizabeth, and them unjuſtly detained againſt pledges, &c.; and thereupon the ſaid Elizabeth, by W. Jones her attorney, complains; for that the ſaid John, on the twenty-ſixth of March 1782, in the pariſh of Upper Beddington, in the ſaid county of Northamptonſhire, a certain farm of the ſaid Elizabeth there took the cattle, goods, and chattels, to wit, the ſtone horſe, four mares, two geldings, ſix colts, ſix fillies, twenty-three cows, one calf, twenty ſteers, twenty heifers, one hundred and eleven ſheep, two ewes, two lambs, one ſow, eight pigs, three porkers, four carts, one water-cart, ſix waggons, and three hundred cart loads of hay of the ſaid Elizabeth, and them unjuſtly detained againſt ſureties and pledges, until, &c. to the damage of the ſaid Elizabeth of four hundred pounds; and therefore ſhe brings ſuit, &c.

Cogniz nce for one q arter of a year's rent.

And the ſaid John Shell, by Henry Bagſhaw, his attorney, comes and defends the force and injury, when, &c. and as bailiff of the reverend Edward Montgomery well acknowledges the taking of the cattle, goods, and chattels, in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that the ſaid Elizabeth Harris continually for one quarter of a year next before and ending on the twenty fifth of March 1782, and from thence until and at the ſaid time when, &c. held and enjoyed the ſaid farm in which, &c. with the appurtenances, as tenant thereof by virtue of and under a certain demiſe to her thereof made, at the yearly rent of two hundred and twenty-two pounds ſix ſhillings and ſixpence, payable quarterly, if demanded, by even and equal portions, which ſaid rent was payable to the ſaid Edward; and becauſe fifty-five pounds eleven ſhillings and ſevenpence halfpenny of the rent aforeſaid, for one quarter of a year ending on the twenty-fifth of March 1782, on that day in that year, became due and in arrear from the ſaid Elizabeth to the ſaid Edward, and alſo at the ſaid time of the taking of the ſaid cattle, goods, and chattels, were and remained due, in arrear, and unpaid to the ſaid Edward, he the ſaid John, as bailiff of the ſaid Edward, well acknowledges the taking of the ſaid cattle, goods, and chattels in the ſaid farm in which, &c. and juſtly, &c. after the ſame rent became

came due, to wit, at the ſaid time when, &c. and for and in the name of a diſtreſs for the ſaid rent ſo due, in arrear, and unpaid to him the ſaid Edward as aforeſaid, which ſaid rent ſtill remains due, in arrear, and unpaid: and this, &c.; wherefore he prays judgment and a return of the ſaid cattle, goods, and chattels, together with his damages, coſts, and charges in and about his ſuit, according to the form of the ſtatute in ſuch caſe made and provided, to be adjudged to him, &c.: And for further cognizance in this behalf, he the ſaid John, by leave, &c. as bailiff of the ſaid Edward Montgomery, well acknowledges the taking of the ſaid cattle, goods, and chattels, in the ſaid place in which, &c.; and juſtly, &c.; becauſe he ſays, that the ſaid Elizabeth, continually for one year next [illegible] and ending on the twenty-fifth of March 1782, and from thence until and at the ſaid time when, &c. held and enjoyed the ſaid farm in which, &c. with the appurtenances, as tenant thereof to the ſaid Edward, under and by virtue of a certain demiſe thereof made by the ſaid Edward, at the yearly rent of two hundred and twenty-two pounds ſix ſhillings and ſixpence, payable quarterly, if demanded, and at the further yearly rent of five pounds, payable to the ſaid Edward for every acre of the ſaid demiſed premiſes, being meadow or paſture land, except a certain part thereof called the Hill Allotment, which was deemed arable or convertable land, and which ſhe the ſaid Elizabeth ſhould ear, dig, plough, or convert into tillage, without the expreſs leave of the ſaid Edward, his heirs, executors, or adminiſtrators, in writing firſt had and obtained, and ſo in proportion for any greater or leſſer quantity than one acre, the firſt payment to be made on ſuch of the ſaid quarter-days as ſhould next come after ſuch coming, digging, ploughing, or converting into tillage; and becauſe ſhe the ſaid Elizabeth, before the ſaid twenty-fifth of March, being one of the quarter days on which the aforeſaid rent of two hundred and twenty-two pounds ſix ſhillings and ſixpence was reſerved and became payable, to wit, on the firſt of January, in the year aforeſaid, and on divers other days and times between that day and the ſaid twenty fifth of March, had eared, dug, ploughed, and converted into tillage, and cauſed to be eared, dug, ploughed, and converted into tillage divers, to wit, fifty-five acres and three quarters of another acre of the ſaid demiſed premiſes, being meadow and paſture land, and not any part thereof belonging to the ſaid Hill Allotment, without the leave of the ſaid Edward Montgomery in writing or otherwiſe firſt had and obtained, by reaſon whereof two hundred and ſeventy-eight pounds fifteen ſhillings of the ſaid laſt-mentioned rent, that is to ſay, five pounds for each and every of the ſaid fifty-five acres and three quarters of another acre, on the ſaid twenty-fifth of March, in the year aforeſaid, became due and in arrear from the ſaid Elizabeth to the ſaid Edward, at the ſaid time when, &c. were and remained due, in arrear, and unpaid to the ſaid Edward, he the ſaid John, as bailiff of the ſaid Edward, well acknowledges the taking of ſaid cattle, goods, and chattels,

2d cognizance, for an increaſed rent of 5l. per acre for every acre ploughed up, payable on the ſame days as [illegible] er rent.

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in the ſaid place in which, &c. and juſtly, &c. after the ſaid laſt-mentioned rent became due, in arrear, and unpaid to him the ſaid Edward as aforeſaid, which ſaid laſt-mentioned rent ſtill remains due, in arrear, and unpaid; and this, &c.; wherefore, &c.: And for a further cognizance in this behalf, he the ſaid John, by leave, &c. and as bailiff of the ſaid Edward Montgomery, well acknowledges the taking of the ſaid goods and chattels in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that the ſaid Elizabeth, continually for one quarter of a year next before and ending on the twenty-fifth of March 1782, and from thence until and at the ſaid time when, &c. held and enjoyed the ſaid farm in which, &c. with the appurtenances, as tenant thereof to the ſaid Edward under and by virtue of a certain demiſe thereof made by the ſaid Edward at the yearly rent of two hundred and twenty-two pounds ſix ſhillings and ſixpence, payable to the ſaid Edward quarterly, if demanded, by even and equal portions, and at the further yearly rent of five pounds, payable to the ſaid Edward for every acre of the ſaid demiſed premiſes laſt mentioned, being meadow or paſture land (except a certain part thereof called the Hill Allotment, which was deemed arable or convertable land) which ſhe the ſaid Elizabeth ſhould ear, dig, plough, or convert into tillage without the expreſs leave of the ſaid Edward, his heirs, executors, or adminiſtrators, in writing firſt had and obtained, and ſo in proportion for any greater or leſſer quantity than one acre, the firſt payment to be made on ſuch of the ſaid quarter days as ſhould next come after ſuch earing, digging, ploughing, or converting into tillage; and becauſe fifty-five pounds eleven ſhillings and ſevenpence halfpenny of the ſaid rent in this cognizance firſt mentioned, for one quarter of a year ending on the twenty-fifth of March 1782, and alſo two hundred and ſeventy-eight pounds fifteen ſhillings for fifty-five acres and three quarters of an acre of the ſaid demiſed premiſes laſt-mentioned, which ſhe the ſaid Elizabeth, before the ſaid twenty-fifth of March, being one of the quarter days on which the aforeſaid rent of two hundred and twenty-two pounds ſix ſhillings and ſixpence was reſerved and made payable, to wit, on the firſt of January, in the year aforeſaid, and on divers other days and times between that day and the ſaid twenty-fifth of March, had eared, dug, ploughed, and converted into tillage, and cauſed to eared, dug, ploughed, and converted into tillage the ſaid fifty-three acres and three quarters of an acre of the ſaid demiſed premiſes laſt-mentioned, being meadow or paſture land, and not any part thereof belonging to the ſaid Hill Allotment, without the leave of the ſaid ward in writing or otherwiſe firſt had or obtained, making together the ſum of three hundred and thirty-four pounds ſix ſhillings and ſevenpence halfpenny, on the ſaid twenty-fifth of March, in the year aforeſaid, became due, in arrear, and unpaid from the ſaid Elizabeth to the ſaid Edward, and at the ſaid time when, &c. were and remained due, in arrear, and unpaid unto the ſaid Edward, he the ſaid John, as bailiff of the ſaid Edward, well acknowledges the

3d cognizance, for both rents joined.

taking of the ſaid cattle, goods, and chattels in the ſaid place in which, &c. and juſtly, &c. after the ſaid two laſt-mentioned rents became due, to wit, at the ſaid time when, &c. for and in the name of a diſtreſs for the ſaid two laſt-mentioned rents ſo due, in arrear, and unpaid to him the ſaid Edward as laſt aforeſaid, which ſaid two laſt-mentioned rents ſtill remain due, in arrear, and unpaid; and this, &c.; wherefore, &c. THO. WALKER.

Plea in bar, that after rent due, and before diſtreſs, that plaintiff tendered the rent.

And the ſaid Elizabeth, as to the ſaid cognizance of the ſaid John by him firſt above made, ſays, that he the ſaid John, by reaſon of any thing by him in the cognizance above alledged, ought not, as bailiff of the ſaid Edward Montgomery, to acknowledge the taking of the ſaid cattle, goods, and chattels in the ſaid place in which, &c. to be juſt; becauſe ſhe ſays, that after the twenty-fifth of March 1782, and before the ſaid time when, &c. to wit, on the twenty-ſixth of March, in the year aforeſaid, at the pariſh aforeſaid, in the county aforeſaid, ſhe the ſaid Elizabeth tendered and offered to pay to the ſaid Edward the ſaid fifty-five pounds eleven ſhillings and ſevenpence halfpenny in that cognizance mentioned, which the ſaid Edward then and there wholly refuſed to accept; and that after the ſaid tender ſo made as aforeſaid, and before the ſaid diſtreſs was ſo made and taken as aforeſaid, no requeſt or demand of the ſaid fifty-five pounds eleven ſhillings and ſevenpence halfpenny was ever made of the ſaid Elizabeth by the ſaid Edward, or any other perſon on his behalf; and this, &c.; wherefore ſhe prays judgment and her damages, by reaſon of the taking and unjuſtly detaining of her ſaid cattle, goods, and chattels, to be adjudged to her, &c.: And for a further plea in bar in this behalf, the ſaid Elizabeth, by leave, &c. ſays, that the ſaid John, by reaſon of any thing in that cognizance above alledged, ought not, as bailiff of the ſaid Edward, to acknowledge the taking of the ſaid cattle, goods, and chattels in the ſaid place in which, &c. to be juſt; becauſe ſhe ſays, that he the ſaid John, at the ſaid time when, &c. of his own wrong took the ſaid cattle, goods, and chattels in the ſaid place in which, &c. and detained the ſame againſt ſureties and pledges until, &c. in manner and form as the ſaid Elizabeth hath above complained againſt him; without this, that ſhe the ſaid Elizabeth continually for one quarter of a year next before and ending on the twenty-fifth of March 1782, and from thence until the ſaid time when, &c. held and enjoyed the ſaid farm in which, &c. with the appurtenances, as tenant thereof under ſuch demiſe to her thereof made, as in the ſaid cognizance in that behalf is above alledged; and this, &c.; wherefore inaſmuch as the ſaid John hath above acknowledged the taking of the ſaid cattle, goods, and chattels in the ſaid declaration mentioned, ſhe the ſaid Elizabeth prays judgment and her damages, by reaſon of the taking and unjuſtly detaining the ſame, to be adjudged to her, &c.: And the ſaid Elizabeth, for a further traverſe of the rent being in arrear. To 2d cognizance, *de injuriâ*, &c. and traverſes plaintiff's holding.

2d Plea to firſt cognizance, *de injuriâ ſuâ*, and traverſe of plaintiff holding *&c.*

3d Plea to 1ſt cognizance, *de injuriâ ſuâ*, and traverſes plaintiff's holding.

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ther plea in this behalf, by like leave, &c. &c.; becauſe ſhe ſays, that the ſaid John, at the ſaid time when, &c. of his own wrong took the ſaid cattle, goods, and chattels in the ſaid place in which, &c. and unjuſtly detained the ſame againſt gages and pledges until, &c. in manner and form as the ſaid Elizabeth hath above complained againſt him; without this, that the ſaid fifty-five pounds eleven ſhillings and ſevenpence halfpenny in that cognizance mentioned, or any part thereof, at the ſaid time when, &c. was in arrear and unpaid from the ſaid Elizabeth to the ſaid Edward, in manner and form as the ſaid John hath in his ſaid firſt cognizance in that behalf alledged; and this, &c.; wherefore inaſmuch, &c.: And the ſaid Elizabeth, as to the ſaid cognizance of the ſaid John by him ſecondly above made, ſays, that he the ſaid John, by reaſon of any thing, &c. &c.; becauſe ſhe ſays, that the ſaid John, at the ſaid time when, &c. of his own wrong, took the ſaid cattle, goods, and chattels in the ſaid place in which, &c. and unjuſtly detained the ſame againſt gages and pledges until, &c. in manner and form as the ſaid Elizabeth hath above complained againſt him; without this, that the ſaid Elizabeth held and enjoyed the ſaid farm in which, &c. with the appurtenances, as tenant thereof to the ſaid Edward under any demiſe thereof made by the ſaid Edward, as in the ſaid ſecond cognizance in that behalf is above alledged; and this, &c.; wherefore ſhe prays judgment and her damages by reaſon of the taking and unjuſtly detaining of her ſaid cattle, goods, and chattels, to be adjudged to her, &c. And for further plea, &c. &c.; becauſe ſhe ſays, that the ſaid John, at the time when, &c. of his own wrong took the ſaid cattle, goods, and chattels, in the ſaid place in which &c. and unjuſtly detained the ſame againſt gages and pledges until, &c. in manner and form as the ſaid Elizabeth hath above thereof complained againſt him; without this, that the ſaid two hundred and ſeventy-eight pounds fifteen ſhillings in the ſaid ſecond cognizance mentioned, or any part thereof, ever became or were due from the ſaid Elizabeth to the ſaid Edward, as the ſaid John hath in his ſecond cognizance in that behalf above alledged; and this, &c.; wherefore inaſmuch, &c.: And the ſaid Elizabeth, as to the ſaid laſt cognizance, &c.; becauſe ſhe ſays, that the ſaid John, at the ſaid time when, &c. of his own wrong took the ſaid cattle, goods, and chattels in the ſaid place in which, &c. and unjuſtly detained the ſame againſt gages and pledges until, &c. as the ſaid Elizabeth hath above thereof complained againſt him; without this, that the ſaid Elizabeth held and enjoyed the ſaid farm in which, &c. with the appurtenances, as tenant thereof to the ſaid Edward, as in the laſt cognizance above alledged; and this, &c.; wherefore ſhe prays judgment, &c.: And for further plea in this behalf to the ſaid cognizance of the ſaid John by him laſtly above made, as to the ſaid ſum of fifty-five pounds eleven ſhillings and ſevenpence halfpenny in that laſt cognizance mentioned, ſhe the ſaid Elizabeth, by leave, &c.; becauſe ſhe ſays, that after the ſaid twenty-fifth of March 1782, and before ſaid time when, &c. to wit, on the twenty-ſixth of March, in the year aforeſaid, at the

2d Plea to 2d cognizance *de injuria*, &c. and traverſing the rent becoming due to defendant.

To 2d cognizance *de injuria*, traverſe of plaintiff's enjoying.

2d Plea to 3d cognizance, that it became due, and before diſtreſs the plaintiff offered to pay, &c.

3d Plea to 3d cognizance, *de injuria*, &c. and traverſe that the rent ever became due.

parish aforesaid, she the said Elizabeth tendered and offered to pay to the said Edward the said fifty-five pounds eleven shillings and sevenpence halfpenny in that cognizance mentioned, which the said Edward then and there refused to accept, and that after the said tender so made as aforesaid, and before the said distress was so made or taken as aforesaid, no request or demand of the said fifty-five pounds eleven shillings and sevenpence halfpenny was either made of the said Elizabeth by the said Edward, or any other person on his behalf; and this, &c.; wherefore she prays judgment &c.: And for further plea, &c.; because she says, that the said John, at the said time when, &c. unjustly detained the same against gages and pledges, until, &c. as the said Elizabeth hath above thereof complained against him; without this, that the said two hundred and seventy-eight pounds fifteen shillings, or any part thereof, ever became or were due from the said Elizabeth to the said Edward, as the said John hath in his said last cognizance above alledged; and this, &c.; wherefore she prays judgment, &c.

J. ADAIR.

Replication, issue on all the pleas.

And the said John, as to the said plea of the said Elizabeth by her first above pleaded in bar to the said cognizance of the said John by him first above made, says, that by reason of any thing in that plea alledged, he ought not to be barred from acknowledging the taking of the said cattle, goods, and chattels in the said place in which, &c. to be just; because he says, that after the said twenty-fifth of March 1782, and before the said time when, &c. she the said Elizabeth did not tender or offer to pay to the said Edward the said fifty-five pounds eleven shillings and sevenpence halfpenny in the said cognizance mentioned, in manner and form as the said Elizabeth hath in her said plea in bar alledged; and of this he the said John puts himself upon the country, and the said Elizabeth doth the like, &c. (Issue on all the pleas.)

Postea.

Afterwards the process being continued between the parties aforesaid, in the plea aforesaid, the jury thereon between them is respited before the justices of our lord the king at Westminster, until fifteen days from the day of Easter, unless the lord our king's justices assigned to hold the assizes in the county aforesaid, by force of the statute in that case made and provided, shall first come on Monday, the third of March 1783, at Northampton, in the county aforesaid, for default of the jurors, &c.; at which day, before the justices of our lord the king at Westminster, come as well the said Elizabeth by her attorney aforesaid as the said John by his attorney aforesaid, and the aforesaid justices, before whom, &c. have sent here the record thereof had before them in these words, to wit: Afterwards, on the day and in the year, and at the place within contained, before sir James Eyre, knight, one of the barons of the exchequer, and , to the said sir James Eyre and sir John Skynner, knight, chief baron of the exchequer of our said lord the king, justices of our said lord the king appointed to take the assizes within and for the within-mentioned county

by

by force of the ſtatute in ſuch caſe made and provided in this behalf aſſociated, the preſence of the ſaid ſir J. Skynner not being expected by virtue of the writ of our ſaid lord the king of *ſi non omes*, &c. came as well the within-named Elizabeth Harris as the ſaid John Shell, by their attornies within-mentioned, and the jurors of the jury, whereof mention is within made, being called, to wit, John Clarke, J. Adams, Samuel Eſted, Richard Kaley, Robert Andrew, Thomas Samwell, Thomas Wade, George Aſhley. Peter John Fremaux. Charles Fox, Thomas Mercer, and Charles Newman, eſquires, likewiſe come, and are ſworn upon that jury, and being choſen, tried, and ſworn to ſpeak the truth of the matters within contained, as to the ſaid firſt iſſue between the parties joined, upon their oath ſay, that after the twenty-fifth of March 1782, and before the ſaid time when, &c. the ſaid Elizabeth did not tender or offer to pay to the ſaid Edward Montgomery the ſaid fifty-five pounds eleven ſhillings and ſevenpence halfpenny in the ſaid cognizance of the ſaid John by him firſt above made, mentioned in manner and form as the ſaid Elizabeth hath in her ſaid plea firſt above pleaded alledged: And as to the ſaid ſecond iſſue between the parties aforeſaid within joined, the jurors aforeſaid, upon their oath aforeſaid, ſay, that the ſaid Elizabeth continuing for one quarter of a year next before and ending on the twenty-fifth of March 1782, and from thence until and at the ſaid time when, &c. held and enjoyed the ſaid farm in which, &c. with the appurtenances, as tenant thereof to the ſaid Edward under ſuch a demiſe to her thereof made, as in the ſaid cognizance of the ſaid John by him firſt above made ſo alledged [verdicts for avowant on all the iſſues]; and the jurors aforeſaid aſſeſs the damages of the ſaid John, by reaſon of the premiſes, over and above his coſts and charges which he hath been put to about his ſuit in this reſpect to three hundred and thirty-four pounds ſix ſhillings and eightpence halfpenny, and for thoſe coſts and charges to forty ſhillings; and hereupon the ſaid John freely here in court remits to the ſaid Elizabeth three hundred and thirty-four pounds five ſhillings and eightpence halfpenny, parcel of the ſaid three hundred and thirty four pounds ſix ſhillings and eight pence halfpenny, the damages aforeſaid, by the jury aforeſaid, in form aforeſaid found; therefore the ſaid Elizabeth, as to the ſaid three hundred and thirty-four pounds five ſhillings and eightpence halfpenny, parcel, &c. is acquitted, and the ſaid John prays judgment of the court here of and upon the premiſes aforeſaid as to the firſt reſidue of the damages aforeſaid, in form aforeſaid, found, and the ſaid forty ſhillings for the coſts and charges aforeſaid, and prays alſo a return of cattle, goods, and chattels aforeſaid to be made to him; and becauſe the juſtices here will adviſe themſelves of and upon the premiſes, before they give judgment thereon, a day is given to the ſaid parties here until on the morrow of the Holy Trinity, to hear their judgment thereon, for that the ſaid juſtices here are not yet adviſed thereof; at which day, that is to ſay, on the morrow of the Holy Trinity came here the ſaid parties by their attornies

1ſt Iſſue for defendant.

For avowant on all the iſſues.

Remittitur damna.

aforesaid, but because the justices here are not yet advised about giving judgment of and upon the premises, further day is thereupon given to the said parties here until, &c. to hear judgment of and upon the premises, for that the said justices are not yet advised thereof [continuances to Hilary, Easter, and Trinity terms]; at which day come here as well the said John Shell as the said Elizabeth, by their attornies aforesaid, and hereupon the premises being seen by the justices here and fully understood, it is considered that the said Elizabeth Harris take nothing by her declaration aforesaid, but that she be in mercy, &c. and that the said John Shell go thereof without day, &c.; and it is further considered, that the said John shall recover the said first residue of the damages aforesaid, and all forty pounds for his costs and charges aforesaid, by the jurors aforesaid in form aforesaid adjudged, together with pounds for his increased costs and charges adjudged to the said John Shell at his request, by the justices of our said lord the king now here, which said costs and charges amount in the whole to pounds, and that he have a return of the cattle, goods, and chattels aforesaid to be detained to himself irreplevisable for ever. H. RUSSEL.

Judgment.

The jury at the trial found the first, second, third, fourth, fifth, sixth, and seventh issues for the defendant, and a case was referred for the opinion of the court on the first and last issues, which turned upon the second and last cognizance viz whether the increased rent could be distrained for or not, which after solemn argument in C. B. the court held in the negative. The postea was indorsed thus, one, two, three, four, five, six, seven, issues for avowant, damages nine-five pound eleven shillings and eight pence halfpenny, costs forty shillings, and after the court had determined on the case reserved to the above inquisition on the pleadings, was, and for avowant on the fifth and eighth issues, damages two hundred and seventy five pounds fifteen shillings, costs forty shillings. After mature consideration, I drew the postea and judgment as above.

The judgment at common law in replevin for avowant is a *return irreplevisable*. No damages were recoverable before or by the statute of Gloucester; therefore, no costs by that statute, the statute of 7. Hen. 8. c. 4 and 21. Hen. 8. c. 19. gave avowants in cases of rent, &c if they recovered, or plaintiffs were otherwise barred damages and costs. Thus it stood till 17. Car. 2. c. 7. by which statute (which relates only to distresses for rent) it is provided, that if plaintiff be nonsuited before issue joined, the defendant making suggestion in nature of an avowry, &c. shall have a writ of inquiry to ascertain the sum in arrear, and the value of the distress, and have judgment for the arrears with costs, &c; and in case plaintiff discontinue, &c. shall have such writ, or if verdict shall be given against him, then the jury impannelled to try the issue shall, at the prayer of the defendant, enquire concerning the sum in arrear, and the value of the goods or cattle distrained, and thereupon defendant shall have judgment to have a return of the cattle distrained, or the value thereof, together with his costs, and shall have execution for the same, by *fieri facias* or *elegit*, &c. By the above statutes, the defendant in replevin has another remedy than the common law had provided, which in all cases was irreplevisable if he succeeded (i judgment was upon a demurrer, or after a verdict the return is irreplevisable, 14. Eliz. c. 5.); if upon a nonsuit, and before verdict, the return is not irreplevisable); but it he will have this remedy he must pursue the statute, and therefore, if on trial he has a verdict, he must go on and pray the jury impannelled; for it cannot be supplied by a writ of inquiry after, since the statute ties it up to the jury impannelled, (1. Lev. 235 Carth. 362.) to enquire concerning the sum of the arrears, and the value of the goods distrained, &c. If this be omitted (as it was in the present case), the avowant cannot have judgment upon the statute, that is, he cannot have judgment for the arrears, and an execution by *fieri facias*

or

er *elegit* for the arrears, damages, and costs, the jury must find both the value of the distress and the rent in arrear. If they find the one and not the other, the defendant shall cannot have judgment upon the statute but in such case, and also where they find neither the one nor the other, he must, if he takes judgment at all, have judgment at common law *pro retorno habendo*. Vide Ld. Raym. 170. 1. Salk. 5 Com. Digest, 5 4.

To prevent vexatious replevins the 11 Geo. 2. c. 19 directs the sheriff, upon making replevin writ the distress [illegible], to take replevin bond with sureties, conditioned that plaintiff shall prosecute the suit with effect and without delay, and duly return the cattle or goods distrained in case a return be awarded, [illegible] bond may be assigned to party distrained who may bring suit thereon. [illegible] defendant, [illegible] is compulsive [illegible] may not sue for [illegible] plaintiff, [illegible] action be [illegible].

In order to [illegible] bond [illegible] that in the [illegible] plaintiff [illegible] [illegible], and that a writ [illegible] actually issue to which an [illegible] returned, otherwise the bond is not to be sued. If, therefore, the defendant, in case of a distress for rent, pursues the statute remedy by the 17. [illegible] and takes assignment of the [illegible], he waives all benefit of the [illegible] provisions, and cannot sue for the surcties thereupon, but must in award of return and detainder sue the plaintiff in replevin to determine the distress, by taking such judgment for the [illegible] to the plaintiff shall have execution [illegible] by [illegible] 5. If on the other hand the defendant elects the common law remedy, and takes his judgment *pro retorno*, he may upon an *elegit* returned to the writ *de retorno habendo* sued out thereupon, call upon the sheriff to assign him the replevin bond, and then bring an action against the sureties for the penalty (which must be double the value of the distress), who cannot be relieved therefrom other than by rule of court, which the court would not make but upon payment of the arrears together with all damages and costs.

In the present case therefore, as the verdict was incomplete for the statute remedy, omitting the damage found by the jury, and for the costs which are pursuant to the statute 17 & 21. Hen. 8. the common law judgment *pro retorno* was the better remedy for the defendant, as the sureties in the replevin bond were full responsible, and the plaintiff not worth any thing.

After the statute 17 Car. was made, and before the replevin bond was given by the 11 Geo. 2. this statute judgment and execution seems to have been more clearly than the judgment at common law, which was [illegible] to many inconveniences, for if the judgment was not on a verdict but demurrer, the plaintiff might forbear writs of inquiry and damages, and after the case was, or the writ of inquiry was returned to the writ of error the defendant was forced to sue out a *capias in withernam* which might be returned *nulla bona*; but now, since the 11 G. 2. when new there is a bond, I am of opinion that the common law judgment *pro retorno* is better in all cases of rent as the bondsmen may be sued, and if insufficient the sheriff is answerable to the party.

G. CROMPTON.

JOHATHAN REYNOLDS *against* SARAH TYAS AND SAMUELL COOK } YORKSHIRE, to wit. Declaration for taking eight acres of wheat part whereof was cut and reaped, and the other part unreaped, and one hundred cart loads of wheat in the straw, at Bilh, in the parish of Snaith, in the said county, in a certain place there called Saville Closes, &c.

And the said Sarah and Samuel, by A. B. their attorney, come and defend the wrong and injury, when, &c. and the said Sarah, as Avowry and cognizance. Avowry as administratrix and cognizance as her bailiff, that T. H. seised in fee of a rent charge of 6*s* issuing out of *locus*, and T. H being, &c. and plaintiff being seised of *locus* 3*l.* 12*s.* of rent for 12 years became due to T. H. in his lifetime, and is unpaid to defendant as administratrix; administration granted, &c.

adminiſtratrix of all and ſingular the goods and chattels, rights and credits, which were of the ſaid Thomas Hopkinſon at the time of his death, who died inteſtate, in her own right well avows, and the ſaid Samuel, as bailiff of the ſaid Sarah, well acknowledges the taking of the ſaid corn, goods, and chattels in the ſaid declaration mentioned, in the ſaid place in which, &c. and juſtly, &c.; becauſe they ſay, that one Thomas Hopkinſon, for and during the ſpace of twelve years and more next before the feaſt of St. Martin, in the year of Our Lord 1780, according to the old ſtyle and calculation of time formerly uſed in this kingdom, was ſeiſed as of fee and right, of and in a certain annual or yearly rent charge of ſix ſhillings, iſſuing out of the ſaid place in which, &c. amongſt other lands and tenements, with the appurtenances, and payable to the ſaid Thomas Hopkinſon on the feaſt day of St. Martin in every year, according to the ſaid old ſtyle; and the ſaid Thomas Hopkinſon being ſo ſeiſed of the ſaid rent, and the ſaid Jonathan, during all the time aforeſaid, and ſtill being ſeiſed of the ſaid place in which, &c. three pounds twelve ſhillings of the ſaid rent, due and payable to the ſaid Thomas Hopkinſon, in his lifetime, for twelve years, ending on the feaſt of St. Martin, in the year of Our Lord 1780, according to the ſaid old ſtyle, on that feaſt in that year became due and owing to the ſaid Thomas Hopkinſon, in his lifetime, and at the time of the death of the ſaid Thomas Hopkinſon, which ſaid Thomas Hopkinſon afterwards, to wit, on the twentieth of October 1781, at the pariſh aforeſaid, in the ſaid county, died inteſtate, remained and continued unpaid to the ſaid Sarah, and at the ſaid time when, &c. were wholly unpaid either to the ſaid T. Hopkinſon, in his lifetime, or to the ſaid Sarah ſince the death of the ſaid T. Hopkinſon, (to which ſaid Sarah, adminiſtratrix of all and ſingular the goods, rights, credits, cattle, and chattels which were of the ſaid T. Hopkinſon at the time of his death, who died inteſtate, after the death of the ſaid T. Hopkinſon, and before the ſaid time when, &c. to wit, on the twenty-ninth of December 1781, at the pariſh aforeſaid, in the ſaid county, by William Coates, clerk, maſter of arts, commiſſary or official of the peculiar and ſpiritual juriſdiction of Snaith, lawfully authoriſed, to whom the granting of that adminiſtration did of right belong, was in due form of law committed), for which reaſon ſhe the ſaid Sarah, as adminiſtratrix as aforeſaid, well avows, and the ſaid Samuel, as her bailiff, well acknowledges the taking of the ſaid corn, goods, and chattels, at the ſaid time when, &c. in the ſaid place in which, &c. and juſtly, &c. for and in the name of a diſtreſs for the ſaid rent, ſo being in arrear and unpaid, which ſaid rent ſtill remains in arrear and unpaid; and this, &c.; wherefore, &c. [profert of letters of adminiſtration] &c.: And for a further avowry and cognizance in this behalf, by leave, &c. ſhe the ſaid Sarah, as adminiſtratrix as aforeſaid well avows, and the ſaid Samuel, as bailiff of the ſaid Sarah, well acknowledges, the taking of the ſaid corn, goods, and chattels in the ſaid declaration mentioned, in the ſaid place in which, &c. and juſtly, &c.; becauſe they ſay, that one T. Hop-

Adminiſtration committed by peculiar.

[Avowry and cognizance for a quit rent of 6s.

Hopkinſon, for and during the term of twelve years and more, next before the feaſt of St. Martin 1780, according to the old ſtyle and calculation of time formerly uſed in this kingdom, was ſeiſed of fee and right of and in a certain quit rent of ſix ſhillings, payable for and in reſpect of the ſaid place in which, &c. amongſt other lands and tenements, with the appurtenances, to the ſaid T. Hopkinſon, on the feaſt of St. Martin in every year, according to the ſaid old ſtyle, [from thence to the end ſame as firſt avowry, only inſtead of ſetting out the letters of adminiſtration ſay, "to which ſaid Sarah adminiſtration was granted as aforeſaid," (profert of letters of adminiſtration): 3d Avowry ſame as firſt, only defendant Sarah claims the rent charge in her own right, (and not as adminiſtratrix) for ſix years inſtead of twelve]: And for a further avowry and cognizance, by leave, &c. &c. &c.; becauſe they ſay, that the ſaid Sarah, for and during the ſpace of ſix years next before the ſaid time when, &c. and at the ſaid time when, &c. was, and ſtill is ſeiſed as of fee and right of and in a certain annual fee farm rent of ſix ſhillings, payable for and in reſpect of the ſaid place in which, &c. amongſt other lands and tenements, with the appurtenances, to the ſaid Sarah, on the feaſt day of St. Martin in every year, according to the ſaid old ſtyle, *which ſaid laſt-mentioned rent had been duly anſwered and paid for the ſpace of three years within the ſpace of twenty years next before the firſt day of the ſeſſion of parliament beginning and holden at Weſtminſter the twenty-eighth day of January* 1727, *in the firſt year of the reign of the late king George the Second, and from thence continued by ſeveral prorogations to the twenty-firſt of January* 1731, *being the fourth ſeſſion of that parliament*; and the ſaid Sarah, being ſo ſeiſed of that rent, and the ſaid John during all the ſaid ſix years next before the ſaid time when, &c. and at the ſaid time when, &c. being ſeiſed of the ſaid place in which, &c. becauſe one pound ſixteen ſhillings of the ſaid laſt-mentioned yearly rent for ſix years, ending on the feaſt of St. Martin 1786, according to the ſaid old ſtyle, on that day, in the year laſt aforeſaid, became due to the ſaid Sarah, and from thence, until and at the ſaid time when, &c. were in arrear and unpaid to the ſaid Sarah, ſhe the ſaid Sarah in her own right well avows, and the ſaid Samuel, as bailiff of the ſaid Sarah, well acknowledges, the taking of the ſaid corn, goods, and chattels, in the ſaid place in which, &c. and juſtly, &c. for and in the name of a diſtreſs for the ſaid arrears of the ſaid laſt-mentioned rent, ſo being in arrear and unpaid, and which ſaid arrears of the ſaid laſt-mentioned rent ſtill remain due and unpaid to the ſaid Sarah; and this &c.; wherefore, &c. [5th avowry ſame as fourth, except for a certain annual or yearly rent, inſtead of a *fee* farm rent]: And for a further avowry and cognizance, by leave of, &c.; becauſe ſhe ſays, that for the ſpace of ſix years and more next before the ſaid time when, &c. and alſo at the ſaid time when, &c. he the ſaid John was ſeiſed in his demeſne as of fee of and in the ſaid place when, &c. and held the ſame of the ſaid Sarah by the rent of ſix ſhillings every year, at the feaſt of St. Martin, according to the old ſtyle, yearly to be paid, of which ſaid laſt-mentioned rent the ſaid Sarah was

3d Avowry and cognizance ſame as laſt.

4th Avowry and cognizance, that defendant ſeiſed of a fee farm rent iſſuing out of *locus*, &c.

4. Geo. 2. c. 28. ſ. 5. is neceſſary to be ſtated. Vide Bradbury v. Wright, Douglas, 624.

ſeiſed in her demeſne as of fee, and which ſaid rent had been duly anſwered and paid for the ſpace of three years within the ſpace of twenty years before the firſt day of the ſeſſion of parliament begun and holden at Weſtminſter the twenty-third of January 1727, in the firſt year of the reign of the late king George the Second, and from thence continued by ſeveral prorogations to the twenty-firſt of January 1731, being the fourth ſeſſion of that parliament; and the ſaid Sarah being ſo ſeiſed of the ſaid laſt mentioned rent, and the ſaid Jonathan being ſo ſeiſed of the ſaid place in which, &c and becauſe one pound ſixteen ſhillings of the ſaid laſt mentioned rent, for ſix years, ending on the feaſt of St. Martin 1726, according to the old ſtyle, on that day in that year, became due to the ſaid Sarah, and from thence until and at the time when, &c were in arrear and unpaid to the ſaid Sarah, ſhe the ſaid Sarah in her own right well avows, and the ſaid Samuel, as her bailiff, well acknowledges the taking of the ſaid corn, goods, and chattels, in the ſaid place in which, &c. and juſtify, &c for and in the name of a diſtreſs for the ſaid arrears of the ſaid laſt-mentioned rent ſo being in arrear and unpaid, and which ſaid arrears of the ſaid laſt-mentioned rent ſtill remain due and unpaid to the ſaid Sarah; and this, &c; wherefore, &c. S. LE BLANC.

4 in bar, proving that A. was not ſeiſed, &c. &c.

And the ſaid Jonathan, as to the ſaid avowry and cognizance of the ſaid Sarah and Samuel firſt above made, ſays, that by reaſon of any thing in that avowry and cognizance alledged, the ſaid Sarah as ſuch adminiſtratrix as aforeſaid, ought not to avow, nor ought the ſaid Samuel to acknowledge the taking of the ſaid corn, goods, and chattels in the ſaid declaration mentioned, in the ſaid place in which, &c. as juſt; becauſe he ſays, that the ſaid T. Hopkinſon in the ſaid avowry and cognizance mentioned was not, during the ſaid time in that avowry and cognizance mentioned, or any part thereof, ſeiſed as of fee and right of and in the ſaid annual rent charge of ſix ſhillings, iſſuing out of the ſaid place in which, &c. amongſt other lands and tenements *modo et forma*, &c.; and this the ſaid Jonathan prays may be enquired of by the country, &c. and the ſaid Sarah and Samuel do the like: And for a further plea as to the ſaid avowry and cognizance firſt above made the ſaid Jonathan leave, &c. &c. &c.; becauſe he ſays, that the ſaid three pounds twelve ſhillings paid of the ſaid rent in the ſaid avowry and cognizance above mentioned, were not, nor was any part thereof, due and owing to the ſaid T. Hopkinſon, in his lifetime, or to the ſaid Sarah as ſuch adminiſtratrix as aforeſaid, at the ſaid time when, &c. in manner and form, &c.; and this he prays may be enquired of by the country, &c. *ſimiliter:* [Two like pleas to 2d avowry and cognizance, *mutatis mutandis*; two like pleas to 3d avowry and cognizance, *mutatis mutandis*; two like pleas to 4th avowry and cognizance, *mutatis mutandis*; two like pleas to 5th avowry and cognizance, *mutatis mutandis*]: And as to the ſaid avowry and cognizance by the ſaid defendants laſtly above made, the ſaid Joathan ſaith, that by reaſon, &c.; becauſe he ſays that he did not

for

for and during the ſaid time in the ſaid avowry and cognizance mentioned, or during any part thereof, hold the ſaid place in which, &c. of the ſaid Sarah by the rent of ſix ſhillings every year, *modo et forma, &c* ; and this he prays may be enquired of by the country, *ſimiliter*: And plea to laſt avowry and cognizance, rent in arrear.

WILLIAM COCKELL.

On the trial of this cauſe at ſpring aſſizes 1789, defendant had a verdict.—Damages 3l 12s.

DECLARATION for taking goods and chattels in common form.

Avowry by executor for rent due to his teſtator.

And the ſaid Thomas, by A. B. his attorney, comes and defends the force and injury, when, &c. and as executor of the laſt will and teſtament of Elizabeth Hold, deceaſed, well avows the taking of the ſaid cattle, goods, and chattels in the ſaid declaration mentioned, in the ſaid place in which, &c. juſtly, &c.; becauſe he ſays, that the ſaid John for two whole years next before, and ending on the ſecond of February 1781, and from thence until and at the time of the death of the ſaid Elizabeth hereafter mentioned, enjoyed the ſaid place in which, &c. with the appurtenances, as tenant thereof to the ſaid Elizabeth, under a demiſe thereof theretofore made to him the ſaid John by the ſaid Elizabeth in her lifetime, at the yearly rent of thirty-four pounds, payable half yearly, that is to ſay, on the ſecond day of Auguſt and the ſeventh day of February in every year, by even and equal portions, and during all that time held the ſame of the ſaid Elizabeth, in her lifetime, by virtue of the ſaid demiſe, as her tenant thereof, at the rent aforeſaid; and becauſe ſixty-eight pounds of the ſaid rent, due and payable by the ſaid John to the ſaid Elizabeth in her lifetime, and at the time of her death (which ſaid Elizabeth, on the twenty-ſeventh day of February 1781, at the pariſh aforeſaid, in the ſaid county, died, having firſt made her laſt will and teſtament in writing, and thereby conſtituted and appointed the ſaid Thomas executor thereof), remained and continued in arrear and unpaid to the ſaid Elizabeth, and at the ſaid time when, &c. were wholly unpaid either to the ſaid Elizabeth, in her lifetime, or to the ſaid Thomas, as executor of the laſt will and teſtament of the ſaid Elizabeth, ſince the death of the ſaid Elizabeth; and becauſe the ſaid John ſtayed and remained in poſſeſſion of the ſaid place called Red Farm, in which, &c. continually from and after the death of the ſaid Elizabeth, until and at the ſaid time when, &c. he the ſaid Thomas, as executor of the ſaid laſt will and teſtament of the ſaid Elizabeth, well avows the taking of the ſaid cattle, goods, and chattels, at the ſaid time when, &c. in the ſaid place in which, &c. and juſtly, &c. for and in the name of a diſtreſs for the ſaid rent, ſo in arrear and unpaid, which ſaid rent ſtill remains

mains due, in arrear, and unpaid; and this, &c.; wherefore, &c. (Profert of letters teſtamentary.)

Drawn by MR. CROMPTON.

DECLARATION for taking goods in certain rooms and apartments, part and parcel of a certain meſſuage, &c.

Avowry for an undivided moiety of the rent of

And the ſaid defendant, by A. B. his attorney, comes and defends the force and injury, when, &c. and well avows the taking of the ſaid goods and chattels in the ſaid rooms and apartments, part and parcel of the ſaid meſſuage and dwelling-houſe, in which, &c. and juſtly, &c. becauſe he ſaith, that the ſaid plaintiff, for the ſpace of one whole year, next before and ending on the feaſt day of the Annunciation of the Bleſſed Virgin Mary 1786, and from thence until and at the ſaid time when, &c. enjoyed the ſaid meſſuage or dwelling-houſe in which, &c. with the appurtenances, under a demiſe thereof made to him, at the yearly rent of twenty-two pounds [illegible] ſhillings, payable quarterly, on the feaſt day of the Nativity, &c. by even and equal portions, and during all that time held the ſame of the ſaid defendant and one John Wingate, by virtue of the ſaid demiſe, as their tenant thereof, at the rent aforeſaid, as tenant of one undivided moiety thereof to the ſaid William, of the moiety of the ſaid rent, and as tenant of the other undivided moiety thereof to the ſaid J. W. at the other moiety of the ſaid rent; and becauſe eleven pounds ſix ſhillings and ſixpence, being one moiety of the ſaid rent due and payable by the ſaid plaintiff to the ſaid defendant for the ſpace of one whole year, ending on the feaſt day of the Annunciation of the Bleſſed Virgin Mary 1786, on that day, and from thence until and at the ſaid time when, &c. were in arrear and unpaid to the ſaid defendant, he the ſaid defendant well avows the taking of the ſaid goods and chattels in the ſaid rooms and apartments, part and parcel of the ſaid meſſuage or dwelling-houſe in which, &c. and juſtly, &c. as for and in the name of a diſtreſs for the ſaid moiety of the ſaid rent ſo in arrear and unpaid, and which ſaid moiety of the ſaid rent ſtill remains due, in arrear, and unpaid to the ſaid defendant; and this, &c.; wherefore, &c. [Add another general avowry for eleven pounds ſix ſhillings and ſixpence, one year's rent under a demiſe from defendant only.] S. SHEPHERD.

In bar, &c. and the

And the ſaid plaintiff ſays, that by reaſon of any thing by the ſaid William in his firſt avowry above-mentioned, he ought not to avow the taking of the goods and chattels in the ſaid place in which, &c. to be juſt; becauſe he ſays, that the ſaid William of his own wrong took the ſaid goods and chattels in the ſaid place in which, &c. and juſtly detained the ſame againſt ſureties and pledges until, &c. in manner and form as the ſaid plaintiff hath above complained againſt him; without this, that the ſaid plaintiff enjoyed one undivided moiety of the ſaid meſſuage or dwelling

ling houſe, with the appurtenances, under any ſuch demiſe thereof made to the ſaid plaintiff by the ſaid defendant, as in the ſaid avowry is mentioned, at and under the ſaid rent in the firſt avowry mentioned, payable as therein mentioned, as the ſaid hath in his ſaid avowry above alledged; and this, &c. &c. [Like plea to laſt avowry.]

Replication, iſſue on traverſes.

TOWN OF NEWCASTLE UPON TYNE. Declaration for taking a cask of wine.

And the ſaid J. Green, by A. B. his attorney, ſaid defends the force and injury, when, &c. the mayor and burgeſſes of Newcaſtle upon Tyne and their predeceſſors, mayors and burgeſſes of Newcaſtle upon Tyne aforeſaid, time out of mind, have had, and yet of right ought to have, the cuſtom of the ſaid goods and chattels of all ſtrangers, &c. and of all others, not being free of the ſaid town, for the ſame juſtly, &c.; becauſe before the ſaid time when, &c. to wit, on the feaſt of St. Nicholas, and town of Newcaſtle upon Tyne aforeſaid, in the county of the ſame town, whereof the memory of man is not to the contrary, there was, and yet is, an ancient port, and that the ſaid place, &c. at the ſaid time when, &c. was, and yet is, within the ſaid port and pariſh for landing of goods and merchandize from ſhips and other veſſels coming into the ſaid port, and that the town of, &c. aforeſaid is, and from time whereof the memory of man is not to the contrary hath been, an ancient town and borough, and that the burgeſſes and inhabitants of the ſaid town, for all the time whereof and until the thirtieth of Auguſt, in the twenty-firſt year of the reign of lady Elizabeth, hath been a body corporate and politic in deed and name, by various names of incorporation, and have at divers times within the time aforeſaid, been called as well by the name of good men of the town of Newcaſtle upon Tyne as by the name of burgeſſes of N. &c. as alſo by the name of the burgeſſes and good men of the town of N. &c. as alſo by the name of the commonalty of the town of N. &c. as alſo by the name of the mayor and burgeſſes of the town of N. &c. and that the ſaid late queen Elizabeth, on the ſaid thirtieth of Auguſt, &c. by her letters patent under her great ſeal of England ſealed, and into this court here brought, bearing date the ſame day and year, did grant, and for herſelf, her heirs and ſucceſſors, by her letters patent did ordain and conſtitute, that the aforeſaid town of N. &c. ſhould be and ſhould remain for ever from that time a free town of itſelf, and that the burgeſſes and inhabitants of the ſame town might and ſhould be for ever after that time one body corporate and politic in deed and name, by the name of the mayor and burgeſſes of the town of N. &c. and them by the name of the mayor and burgeſſes of the town of N. &c. did for herſelf, her heirs and ſucceſſors, by the ſame letters patent really and fully erect, make, ordain, and create one body corporate and politic,

that

Cognizance as bailiffs to the mayor, &c. of Newcaſtle, under a cuſtom to take toll of all wine imported thereinto, they having always repaired the port at their own expence, and becauſe the plaintiff refuſed to pay, defendant well acknowledges.

that by the ſame name they ſhould have a perpetual ſucceſſion, as by the ſaid letters patent it doth amongſt other things more fully appear: And the ſaid J. G. further ſays, that the ſaid letters [illegible] afterwards, to wit, on the ſaid thirtieth of Auguſt, in the [illegible]-firſt year, at, &c. was duly accepted by the ſaid mayor [illegible]: And the ſaid J. G. further ſays, that the burgeſſes [illegible] of the town aforeſaid, from time to time, for all the [illegible] thereof, &c. by their various names of incorporation, [illegible] thirtieth of Auguſt, in the ſaid thirty-firſt year, &c. and the [illegible] burgeſſes of the ſaid town of N. &c. for the time being [illegible] hitherto have repaired and maintained, and bee[illegible]ught to repair and maintain the ſaid port at th[illegible] and charges, for the uſe and benefit of all p[illegible] the ſaid port, and for the benefit of the [illegible] and for all the time aforeſaid have of [illegible]e had, received, and taken, and ha[illegible]o have, receive, and take, amongſt [illegible]able toll or duty, to wit, fourpence [illegible] Aume, not belonging to a freeman [illegible] which for all the time aforeſaid hath b[illegible] the ſaid port within the ſaid town of N[illegible]en as the ſaid toll or duty hath been and [illegible] reaſonable requeſt and demand thereof mad[illegible]geſſes and inhabitants of the town aforeſaid, from time t[illegible]or all the ſaid time whereof, &c. by their various na[illegible] incorporation, until the ſaid thirtieth of Auguſt, &c. and [illegible]ayor and burgeſſes of the ſaid town of N. &c. for the time being from thenceforth hitherto, by their miniſters and ſervants, for all the time aforeſaid uſed and have been accuſtomed to take a reaſonable diſtreſs for the ſaid wine ſo imported and landed in the ſaid port, within the ſaid town of N. &c. for the ſaid toll or duty thereof, and to detain ſuch diſtreſs until they were fully ſatisfied and paid the ſaid toll or duty, or until ſuch diſtreſs was replevied: And the ſaid J. Green further ſays, that the ſaid J. R. not being a freeman of the ſaid town of N. &c. at or before the ſaid time when, &c. did on the ſaid eleventh of May 1737, import and land within the ſaid town of N. to wit, on the ſaid place in which, &c. ſeven caſks of wine called aumes of which the ſaid caſk in the ſaid declaration mentioned was one, by reaſon whereof two ſhillings and fourpence for the ſaid toll or duty, to wit, fourpence for each of the ſaid caſks of wine ſo landed became due and payable from the ſaid J. R. to the ſaid mayor and burgeſſes of the ſaid town of N. &c. whereupon the ſaid J. G. as miniſter and ſervant of the ſaid mayor and burgeſſes of the ſaid town of N. &c. and by their command afterwards, that is to ſay, on the ſaid eleventh of May 1737, at, &c. did demand of the ſaid J. R. the ſaid two ſhillings and fourpence for the ſaid toll or duty for his ſaid wine to be paid by the ſaid mayor and burgeſſes, which the ſaid J. R. did not pay, but did then and there refuſe to pay the ſame; and becauſe the ſaid toll and duty of two ſhillings and fourpence at the ſaid time when, &c. was in arrear

and

and unpaid to the ſaid J. G. as bailiff of the ſaid mayor and burgeſſes of the ſaid town of, &c. well acknowledges the taking of the ſaid goods and chattels in the ſaid declaration mentioned, in the ſaid place in which, &c. and juſtly, &c. in the name of a diſtreſs for the ſaid toll or duty ſo unpaid as aforeſaid; and this, &c.; wherefore, &c. E. BOOTLE.

Plea in bar, the defendant *de juria ſua*, and traverſe the cuſtom.

And the ſaid plaintiff ſaith, that for the reaſon before alledged the ſaid defendant, as bailiff of the ſaid mayor and burgeſſes of, &c. ought not to acknowledge the taking of the ſaid goods and chattels in the ſaid declaration mentioned in the ſaid place in which, &c. to be juſt; becauſe he ſaith that the ſaid defendant, at the time and place mentioned in the ſaid declaration of his own wrong, took the ſaid goods and chattels in the ſaid declaration mentioned, and unjuſtly detained the ſame againſt ſureties and pledges until, &c. in manner and form as the ſaid plaintiff above thereof complains againſt him; without this, that the burgeſſes and inhabitants of the town aforeſaid from time to time, for all the ſaid time whereof, &c. by their various names of incorporations, until the ſaid thirtieth of Auguſt, &c.: And the mayor and burgeſſes of the ſaid town of, &c. for the time being from thenceforth until the time of the ſaid cognizance have repaired and maintained, and have been uſed and accuſtomed and ought to repair and maintain the ſaid port at their own proper coſts and charges, for the uſe and benefit of all perſons importing goods in the ſaid port, and for the uſe and advantage of trade and navigation there; and for all the time aforeſaid have of right been entitled, and have had, received, and taken, and have uſed and been accuſtomed to have, receive, and take, amongſt other tolls and duties, &c. [as in cognizance to the words *was replevied*] in manner and form as the ſaid J. G. hath above alledged in his ſaid cognizance; and this, &c.; wherefore, &c.: And the ſaid plaintiff, by leave, &c. ſaith, that for any reaſon before alledged in the ſaid cognizance, the ſaid J. G. as bailiff of the ſaid mayor and burgeſſes of the town, &c. ought not to acknowledge the taking of the ſaid goods and chattels in the ſaid declaration mentioned in the ſaid place in which, &c. to be juſt; becauſe he ſays, that the town of B. in the county of York, is, and from time whereof, &c. hath been an ancient town and borough, and that for all the ſaid time whereof, &c. the burgeſſes of the ſaid town of B. have been, and were free and exempt, and yet ought to be free, quit, and exempt from the payment of all manner of tolls for their goods and merchandizes imported and landed in any part within England, except the port of London, and from all diſtreſſes to be taken for non-payment of ſuch toll; and that at the time of importing and landing in the ſaid port within the ſaid town of, &c. the ſaid caſk of wine mentioned in the ſaid cognizance, being the proper goods and merchandizes of the ſaid plaintiff, and long before, and at the ſaid time when, &c. and ever ſince, the ſaid plaintiff was and yet is a burgeſs of the ſaid

Ad Plea, the plaintiff is burgeſs of B. Yorkſhire, and that the burgeſſes of B. from time whereof &c were free and exempt from the payment of all toll for goods imported, unl into the port London.

town of B. and ought to have been free, quit, and exempt from the payment of the ſaid toll in the ſaid cognizance mentioned for the ſaid caſks of wine of him the ſaid plaintiff, by him imported and landed in the ſaid port of, &c. as aforeſaid, of all which ſaid premiſes the ſaid J. G. afterwards, and before the ſaid time when, &c. to wit, on the firſt of January 1736, at, &c. had notice; nevertheleſs the ſaid J. G. afterwards, to wit, at the ſaid time and place mentioned in the ſaid declaration, of his own wrong took the ſaid goods and chattels in the ſaid declaration mentioned of the ſaid plaintiff, and unjuſtly detained the ſame againſt ſureties and pledges until, &c. *modo et forma*, &c.; and this, &c; wherefore, &c.

G. EYRE.

Replication in maintenance of the cuſtom, and replication to 2d plea; traverſe of the exemption of the burgeſſes of B. mentioned in the plea; iſſues thereon.

To firſt plea in bar iſſue on traverſe: And as to the ſaid plea in bar of the ſaid plaintiff by him laſtly above pleaded to the ſaid cognizance of the ſaid J. G. the ſaid J. G. as before ſays that by reaſon of any thing above alledged he ought not to be barred from acknowledging, &c. becauſe he ſays that the ſaid toll or duty of two ſhillings and fourpence, by reaſon of the ſaid importing of the ſaid ſeven caſks of wine called aumes as aforeſaid, became due and payable from the ſaid plaintiff to the ſaid mayor and burgeſſes of the ſaid town of, &c. and at the ſaid time when, &c. were in arrear and unpaid; without this, that for all the ſaid time whereof, &c. the burgeſſes of the town of B. &c. [as in ſecond plea] *modo et forma*, &c. and this, &c.; wherefore, &c.

Iſſue on laſt traverſe.

E. BOOTLE.

Declaration for taking plaintiff's cattle and goods of plaintiff in a place called Broomfield.

TREMBLE *againſt* BLENKINSHIP. } CUMBERLAND, to wit. John Blenkinſhip was ſummoned to anſwer George Tremble in a plea wherefore he took the cattle of the ſaid George, and unjuſtly detained them againſt ſureties and pledges until, &c.; and whereupon the ſaid George, by A. B. his attorney, complains that the ſaid John, on the fourteenth of June 1750, at, &c. in a certain place there called Briggs Cloſe, took the cattle of the ſaid George, to wit, three cows, &c. and at the pariſh in the county aforeſaid, in a certain place there called Broomfield Meyre, there took other the cattle of the ſaid George, to wit, one cow; and at the pariſh in the county aforeſaid, in a certain other place there called Searle's Lane, otherwiſe Kich Lane, took other the cattle of the ſaid George, to wit, one gelding; and at the pariſh and county aforeſaid, in a certain other place there called Broomfield there took other the cattle, and alſo the goods and chattels of the ſaid George, to wit, one calf, one cart, and one harrow, and unjuſtly detained them againſt ſureties and pledges until, &c. wherefore the ſaid George ſaith he is injured, and hath damages to the value of twenty pounds; therefore he brings ſuit, &c.

And the ſaid John, by A. B. his attorney, comes and defends the force and injury, when, &c. and well avows the taking of the ſaid ſeveral and reſpective cattle, goods, and chattels in the ſaid ſeveral and reſpective places in which, &c. and juſtly, &c. becauſe he ſaith that the ſaid George continually, from and after the feaſt of the Purification of the Bleſſed Virgin Mary 1747 until and upon the feaſt of the Purification of the Bleſſed Virgin Mary 1749, and from thence until and at the ſaid time when, &c. enjoyed the ſaid place called Broomfield, being one of the ſaid places in which, &c. together with divers other lands and tenements, with the appurtenances, lying and being in the pariſh of Broomfield aforeſaid, and during all that time was tenant thereof to the ſaid John by virtue of and under a certain demiſe to him the ſaid George by the ſaid John before then made at and under the yearly rent of ſeven pounds during all that time payable to the ſaid John from the ſaid George at the feaſt of the Purification of the Bleſſed Virgin Mary yearly and every year; and becauſe fourteen pounds for the rent aforeſaid for two years of the ſaid time ended on the feaſt of the Purification of the Bleſſed Virgin Mary 1749, and at that feaſt were due and in arrear from the ſaid George to the ſaid John, and at the ſame time when, &c. were wholly due, owing, and unpaid to the ſaid John; and becauſe the ſaid George after the ſaid rent ſo became due, owing, and in arrear as aforeſaid, and within thirty days next before the taking of the ſaid ſeveral and reſpective cattle, goods, and chattels, or any part thereof, to wit, on the ſame day and year in the ſaid declaration mentioned, had fraudulently and clandeſtinely conveyed away, drove, and removed off the ſaid cattle in the ſaid declaration firſt, ſecondly, and thirdly mentioned, to prevent the ſaid John from diſtraining the ſame for the ſaid arrears of rent, and had for that purpoſe conveyed away, drove, and removed the ſame, to wit, the ſaid three cows, one heifer, and two calves, in the ſaid declaration firſt mentioned, into the ſaid place called Briggs Cloſe, in which, &c. the ſaid cow in the ſaid declaration ſecondly mentioned into the ſaid place called Broomfield Meyre, in which, &c. and chaſed one gelding into the ſaid place called Searle's Lane, otherwiſe Kich Lane, in which, &c. he the ſaid John well avows the taking of the ſaid ſeveral and reſpective cattle, goods, and chattels in the ſaid ſeveral and reſpective places in the ſaid declaration mentioned, in which, &c. at the ſaid time when, &c. being thirty days next after the ſaid cattle in the ſaid declaration firſtly, ſecondly, and thirdly mentioned were, and had been ſo fraudulently and clandeſtinely conveyed away, drove, and removed off the ſaid demiſed premiſes, and juſtly, &c. for and as a diſtreſs for the ſaid rent ſo being in arrear and unpaid, and this, &c. wherefore, &c. D. POOLE.

Avowry for rent in arrear, juſtifies taking diſtreſs in ſeveral places having been fraudulently carried off the premiſes.

And the ſaid George ſays, that the ſaid John, for the reaſons above in his ſaid avowry mentioned, ought not to avow the taking

Plea in bar, as to rent in arrear.

taking of the ſaid ſeveral and reſpective cattle, goods, and chattels in the ſaid ſeveral and reſpective places in which, &c. to be juſt; becauſe he ſays that at the ſaid time when, &c. nothing of the aforeſaid rent in the ſaid avowry mentioned was in arrear to the ſaid John; and this he prays may be enquired of by the country, &c.

DECLARATION for taking ſome cattle.

Cognizance, as bailiff to an adminiſtrator *de bonis non* for rent in arrear in the lifetime of the inteſtate.

And the ſaid defendant comes and defends the wrong and injury, when, &c. and as bailiff of J. Cox, adminiſtrator of the goods and chattels which were of the goods and chattels of the right honourable Charles lord viſcount Preſton, deceaſed, who died inteſtate, unadminiſtered by Anne viſcounteſs dowager Preſton, alſo deceaſed, well acknowledges the taking of the ſaid goods and chattels in the ſaid place in which, &c. and juſtly, &c. for four years rent, next before and ending on the feaſt of Saint Martin the Bleſſed, in winter 1737, under a demiſe made to the plaintiff by lord Preſton, at one entire yearly payment, and that the plaintiff held the ſame as tenant thereof from thence until and at the ſaid time, when, &c. and becauſe eighteen pounds of the rent aforeſaid due and payable by the ſaid plaintiff to the ſaid C. lord viſcount P. for the ſaid four years, ending on the ſaid feaſt of Saint Martin the Bleſſed, in winter, in the year aforeſaid, at the ſaid feaſt, were in arrear and unpaid to the ſaid C. lord viſcount P. and alſo at the ſaid time when, &c. were in arrear and unpaid to the ſaid J. Cox as adminiſtrator in form aforeſaid (to whom adminiſtration of the goods and chattels which were of the goods and chattels of the ſaid C. lord viſcount P. deceaſed, who died inteſtate, and unadminiſtered by the ſaid Anne viſcounteſs dowager P. alſo deceaſed, after the death of the ſaid C. lord viſcount P. and of the ſaid W. D. P. to wit, on the twenty-fourth of May 1745, at the pariſh aforeſaid, was committed by Thomas, by divine providence, lord archbiſhop of York, primate of England, and metropolitan) the ſaid defendant, as bailiff of the ſaid J. Cox, adminiſtrator in form aforeſaid, well acknowledges the taking of the ſaid cow in the ſaid place, in which, &c. and juſtly, &c. for and in the name of a diſtreſs for the ſaid rent ſo in arrear and unpaid, which ſaid rent ſtill remains due, &c.; and this, &c.; wherefore, &c.: And the defendant, [profert of letters of adminiſtration, &c.] E. BOOTLE.

Sarjeant Draper thought this cognizance not demurrable to, by reaſon of the ſtatute of 11 George II. and therefore pleaded as follows:

Plea in bar, admitting that the defendant was bailiff, but

And the ſaid plaintiff ſaith, that for the reaſon above alledged the ſaid defendant ought not, as bailiff of the ſaid J. Cox, to the defendant, *de injuria ſua*, &c.

ac-

acknowledge the taking of the ſaid cow in the ſaid place, in which, &c. to be juſt; becauſe he ſaith, that true it is that the adminiſtration of the goods and chattels, which were of the goods and chattels of the ſaid Charles, late viſcount lord P. deceaſed, who died inteſtate, and unadminiſtered by the ſaid A. viſcounteſs dowager P. deceaſed, after the deaths of the ſaid viſcount lord P. and A. viſcounteſs dowager P. and on the ſame day and year in the ſaid cognizance in that behalf above mentioned was committed to the ſaid J. Cox, by the ſaid then archbiſhop, in manner and form as in the ſaid cognizance above alledged; and that the ſaid defendant was bailiff of the ſaid J. Cox, as is alſo above alledged; but the ſaid plaintiff for plea in this behalf ſaith, that the ſaid defendant at the ſaid time, when, &c. of his own wrong, and without the reſt of the cauſe by him in his ſaid cognizance above alledged, took the ſaid cow in the ſaid place, in which, &c. and unjuſtly detained the ſame againſt ſureties and pledges until, &c. as the ſaid plaintiff above thereof complains againſt him; and this he prays may be enquired of by the county, &c.: And the ſaid plaintiff for further plea in this behalf by leave, &c. further ſaith, that the ſaid defendant, for the reaſon above alledged, ought not, as bailiff of the ſaid J. Cox, to acknowledge the taking of the ſaid cow in the ſaid place, in which, &c. to be juſt, becauſe he ſaith, that the ſaid plaintiff did not hold and enjoy the ſaid place in which, &c. from the ſaid feaſt of Saint Martin the Bleſſed, in winter 1738, until and at the ſaid time when, &c. for the ſpace of ſix calendar months next before the ſaid time when, &c. nor for any part of the ſaid ſix calendar months, under the ſaid demiſe in the ſaid cognizance above mentioned; and this, &c.; wherefore, &c.: And for further plea, &c. to be juſt, becauſe he ſaith, that during all the ſaid four years for which the ſaid rent is ſuppoſed to have accrued due and then payable, he the ſaid plaintiff held the ſaid place in which, amongſt other things, with the appurtenances of the ſaid C. lord viſcount P. under the ſaid demiſe as his tenant thereof at will, only as long as the ſaid plaintiff and viſcount pleaſed at and under the yearly rent aforeſaid, and that the ſaid viſcount during all that time was ſeiſed of the ſaid place in which, &c. with the appurtenances amongſt other things in his demeſne of fee, and being ſo ſeiſed thereof, the ſaid viſcount, ſoon after the feaſt of Saint Martin the Bleſſed, in winter 1738, and before the feaſt of Saint M. 1739, to wit, on the ſixteenth of February 1738, at the pariſh aforeſaid, died ſeiſed of ſuch his eſtate therein, without any iſſue of his body iſſuing, and thereby the ſaid tenancy and eſtate at will of the ſaid plaintiff was then and there ended and determined: And the ſaid plaintiff further ſaith, that upon the death of the ſaid viſcount, the ſaid place in which, &c. amongſt other things, with the appurtenances ſo held by the ſaid plaintiff, deſcended to the honourable Catherine, then the wife of W. W. eſquire, commonly called lord Widdington, and the honourable Mary Graham, ſpinſter, as being aunts and coheirs of the ſaid viſcount, by reaſon whereof the ſaid W. W. and C. in

2d Plea, that he did not hold the *locus in quo* under the demiſe in the cognizance until the ſaid time when, &c. or for ſix months until the ſaid time when, &c.

3d Plea, that the plaintiff was tenant at will to lord P. that he died, upon whoſe death tenancy at will determined, and the ſame deſcended to his two aunts, who demiſed the ſame to the plaintiff and her huſband; that the huſband died, and tenancy ceaſes; the two coheirs demiſed the ſame premiſes to plaintiff, who entered, and put the cattle into premiſes.

right of the ſaid C. and the ſaid Mary, long before the ſaid time when, &c. to wit, on the ſame day and year, entered into the ſaid place, in which &c. amongſt other things, with the appurtenances, and were ſeiſed thereof in their demeſne as of fee in coparcenary; and being ſo ſeiſed thereof, they the ſaid W. and M. long before the ſaid time when, &c. to wit, on the eleventh of February in the ſame year, at, &c. demiſed the ſaid place in which, &c. amongſt other things, with the appurtenances to the ſaid plaintiff, to have and to hold the ſame from the death of the ſaid viſcount as long as the ſaid plaintiff and W. and M. ſhould pleaſe; by virtue of which ſaid demiſe the ſaid plaintiff, before the ſaid time when, &c. entered into the ſaid place, in which, &c. amongſt other things ſo demiſed to him as laſt aforeſaid, with the appurtenances, and from thence until the death of the ſaid W. was poſſeſſed thereof, and during all that time held and enjoyed the ſame as tenant at will thereof to the ſaid W. and M.; and the ſaid plaintiff being ſo poſſeſſed, the ſaid W. afterwards, and long before the ſaid time when, &c. to wit, on the firſt of May 1743, at the pariſh aforeſaid, died, and thereby the ſaid tenancy and eſtate at will of the ſaid plaintiff was then and there ended and determined, and the ſaid Catherine ſurvived the ſaid W. and the ſaid C. and M. were ſeiſed of the ſaid place, in which, &c. amongſt other things in their demeſne as of fee in coparcenary, and being ſo ſeiſed thereof, they the ſaid C. and M. afterwards, and long before the ſaid time when, &c. to wit, on the ſecond of May 1743, at the pariſh aforeſaid, demiſed the ſaid place in which, &c. amongſt other things, with the appurtenances to the ſaid plaintiff, to have and to hold the ſame to the ſaid plaintiff from the death of the ſaid W. as long as the ſaid C. and M. and plaintiff ſhould pleaſe; by virtue of which ſaid demiſe the ſaid plaintiff, before the ſaid time when, &c. entered into the ſaid place in which, &c. and other things ſo demiſed to him as aforeſaid, and from thence until and at the ſaid time when, &c. was, and ſtill is poſſeſſed thereof, and during all that time hath held and enjoyed the ſame as tenant at will thereof to the ſaid C. and M.; and the ſaid plaintiff being ſo poſſeſſed thereof, he the ſaid plaintiff, before the ſaid time when, &c. to wit, on the ſame day and year in the ſaid declaration mentioned, put the ſaid cow into the ſaid place in which, &c. to feed on his graſs then growing there, which ſaid cow was for the cauſe aforeſaid in the ſaid place in which, &c. feeding on the graſs there growing from thence until the ſaid defendant at the ſaid time when, &c. of his own wrong took the ſaid cattle in the ſaid declaration mentioned, and unjuſtly detained the ſame againſt ſureties and pledges until, &c. *modo et forma*, &c.; and this, &c.; wherefore, &c.

R. DRAPER.

The cauſe was compromiſed.

AND

AND the ſaid Richard, by A. B. his attorney, comes and defends the force and injury, when, &c. and well avows the taking of the ſaid cattle in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that the ſame place in which, &c. is, and at the ſaid time when, &c. was, and from time immemorial hath been a certain waſte or lane called Greenaway Lane, and parcel of the manor of Mapple Durham, in the ſaid county of Southampton, lying and being within the tithing of Brimton, within the ſame manor: And the ſaid Richard further ſaith, that long before the ſaid time when, &c. one Edward Gibbon, eſquire, was, and yet is ſeiſed of and in the manor of Mapple Durham, with the appurtenances whereof, &c. in his demeſne as of fee; and that the ſaid Edward Gibbon, eſquire, and all thoſe whoſe eſtate he now hath, and at the ſaid time when, &c. had of and in the ſaid manor, with the appurtenances, for all the time aforeſaid, have had and held, and have been uſed and accuſtomed to have and to hold a court leet and court baron within and for the ſaid manor, at proper and convenient times; and that the jurors of the ſaid court charged and ſworn have been uſed and accuſtomed to preſent and make rules and orders for the better regulation of the commons and waſtes within the ſaid manor under certain reaſonable penalties, and to preſent all thoſe things which to the ſaid court belong: And the ſaid Richard further ſays, that at the court leet and court baron of the ſaid manor, holden in and for the ſaid manor before the ſaid time when, &c. to wit, on the twenty fifth of November 1774, the jurors of the ſaid court there, to wit, [here inſert the names] good and lawful men of the ſaid manor, then and there charged and ſworn to preſent thoſe things which to the ſaid court belonged, then and there preſented in the ſame court, that no horſes or cows, beaſts or bullocks ſhould be turned out or depaſtured on the ſaid common lands without a driver under the pain of one ſhilling for every horſe, and ſixpence for every cow, beaſt, or bullock; nor any hogs ſhould be turned out into the ſaid waſte or lanes of the ſaid manor unyoked or unringed under pain of ſixpence for every hog: And the ſaid Richard further ſays, that within the ſaid manor there is, and from time whereof, &c. there hath been an ancient and laudable cuſtom uſed and approved of within the ſaid manor; that is to ſay, that the jurors charged and ſworn to enquire and preſent theſe things which to the ſaid court belong, at the ſaid court of the manor aforeſaid, holden as aforeſaid, have choſen and preſented, and for all the time aforeſaid have been uſed and accuſtomed to chooſe and preſent certain perſons to ſuperviſe the commons or waſtes in and parcel of the ſaid manor, within the reſpective tithings of the ſaid manor, for one whole year, and until they ſhould be diſcharged by due courſe of law; and the ſaid perſons ſo named have been ſworn by the ſteward of the ſaid court for the time being well and truly to execute the office of haywards for ſuch tithings of the ſame manor reſpectively for the year next enſuing, or until they ſhould be diſcharged by due

Avowry taking cattle that the *locus in quo* is a waſte parcel of the manor of A. and that one A. was lord of the manor, who was accuſtomed to hold a court baron for the regulation of the waſtes; and that at a court duly held, it was ordered that no perſon ſhould turn out any cattle without a driver, and that the court appointed officers to ſuperintend the waſtes, who if they found any cattle without a driver, were to impound them; that the defendant was choſen one of the officers, and he cauſe he found the cattle without a driver, he well avows taking them as diſtreſs for damage feaſant.

courſe of law; which ſaid ſuperviſors ſo choſen and named and ſworn have for all the time aforeſaid, from time whereof, &c. been called and known by the name of haywards, and the ſame ſuperviſors for the time being for all the time aforeſaid, whereof, &c. have ſupervi ed, and have been uſed and accuſtomed to ſuperviſe, as often as they pleaſed, the ſaid commons and waſtes within the ſame manor, lying and being within the reſpective tithings; and if any cattle of any perſons whatſoever was found in any of the ſaid commons and waſtes feeding and depaſturing in and upon ſuch commons or waſtes, contrary to the ſaid preſentment of the ſaid jury of the ſaid court, then the ſaid ſuperviſors for all the time aforeſaid, whereof, &c. have uſed and been accuſtomed within the reſpective tithings for which they were ſo choſen, named, and ſworn to be haywards as aforeſaid, to take ſuch cattle of any commoners ſo found in any of the ſaid commons or waſtes within their reſpective tithings as aforeſaid, and to impound the ſame until the owners thereof paid the ſum or ſums of money ordered to be therefore paid by and in ſuch preſentments ſo made as aforeſaid, or until the ſaid cattle ſhould be replevied by due courſe of law for the common utility and benefit of the tenants and occupiers of lands and tenements within the ſaid manor having common of paſture there, and for the better order, government, and regulation of the ſame: And the ſaid Richard further ſays, that the ſaid E. Gibbon, being ſo ſeiſed of the ſaid manor, with the appurtenances, at the court leet and court baron of the ſaid E. Gibbon, lord of the manor aforeſaid, held within and for the ſaid manor as aforeſaid, the ſaid Richard, being a proper perſon, was named and choſen by the ſaid jurors of the ſaid court to be hayward of the ſaid waſtes and commons for the ſaid tithing of B. and was then and there ſworn by Richard Andrews, ſteward of the ſaid court, well and truly to execute the ſaid office of the ſaid hayward within the ſaid tithing for the year next enſuing, or until he ſhould be diſcharged by due courſe of law; and becauſe the ſaid cattle of the ſaid plaintiffs, having right of common of paſture in the ſaid common lane at the ſaid time when, &c. were on the ſaid common lane or waſte called G. Lane within the ſaid manor, in which, &c. parcel thereof, without a driver, and feeding and depaſturing upon the graſs there then growing, contrary to the ſaid order and preſentment of the ſaid jurors of the jury at the ſaid court leet and court baron above mentioned, he the ſaid Richard, being ſuch hayward as aforeſaid, well avows the taking of the ſaid cattle in the ſaid place in which, &c. and juſtly, &c. as a diſtreſs for the damage there then doing, and until the ſaid plaintiff ſhould pay the ſaid two ſhillings, to wit, one ſhilling for each of the ſaid colts, and this, &c.; where-
I Avow fore, &c.: And the ſaid Richard, for further avowry in this behalf, by leave, &c. well avows the taking of the ſaid cattle in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that the ſame place in which, &c. is, and at the ſame time when, &c. was, and from time whereof, &c. hath been a certain waſte

or

or common lane, called Greenaway Lane, parcel of the ſaid manor of Mapple Durham, in the ſaid county of S. lying and being in the tithing of Brimton, in the ſaid manor: And the ſaid Richard further ſays, that long before the ſaid time when, &c. one Edward Gibbon, eſquire, was and yet is ſeiſed of and in the manor of Mapple Durham, with the appurtenances thereof, &c. in his demeſne as of fee; and that the ſaid E. G. and all thoſe whoſe eſtate he now hath, and at the ſaid time when, &c. had of and in the ſaid manor, with the appurtenances, for all the time aforeſaid, have had and held, and been accuſtomed to hold a court leet and court baron within and for the ſaid manor, at proper and convenient times; and that the jurors of the ſaid court charged and ſworn have been uſed and accuſtomed to preſent thoſe things which to that court belonged: And the ſaid Richard further ſays, that within the ſaid manor there now is, and from time whereof, &c. hath been an ancient and laudable cuſtom uſed and approved of in the ſaid manor, that is to ſay, that the jurors charged and ſworn to enquire and preſent thoſe things which to the ſaid court belong, at the ſaid court of the manor aforeſaid, have been uſed and accuſtomed to chooſe certain perſons to ſuperviſe the commons or waſtes in and parcel of the ſaid manor within their reſpective tithings thereof; and the ſaid perſons being ſo choſen and made, have been ſworn by the ſteward of the ſaid court for the time being well and truly to execute the office of hayward within the reſpective tithings of the ſaid manor for the year next enſuing, or until they ſhould be diſcharged by due courſe of law; which ſaid ſuperviſors ſo choſen, named, and ſworn, have for all the time aforeſaid, whereof, &c. ſuperviſed, and have uſed and been accuſtomed to ſuperviſe, as often as they pleaſed, the ſaid commons and waſtes within the ſaid manor, lying and being within their reſpective tithings: And the ſaid Richard further ſays, that within the ſaid manor there now is, and from time immemorial hath been a certain other ancient and laudable cuſtom there uſed and approved of, that is to ſay, that no perſon or perſons whatſoever, having right of common of paſture for their cattle in the waſtes or common lanes of the ſaid manor, ſhould turn or put any horſe into the common lanes of the ſaid manor to depaſture and feed upon the graſs there without a driver, and if any horſe of any perſon having ſuch right of common as aforeſaid has at any time been found in any of the ſaid commons or waſtes feeding and depaſturing upon the graſs there, then the ſuperviſors for all the time aforeſaid, whereof, &c. have uſed and been accuſtomed within their reſpective tithings for which they were ſo choſen, named, and ſworn to be haywards as aforeſaid, to take ſuch horſes ſo found within the ſaid waſtes or commons within their reſpective tithings, and to impound the ſame until the owners thereof paid a reaſonable ſum of money for the damage done by the ſaid horſes in the commons or waſtes aforeſaid, or until the ſaid horſes ſhould be replevied by due courſe of law for the common utility and benefit of the tenants

and occupiers of lands and tenements within the ſaid manor having common of paſture there, and for the better order, regulation and government of the ſame: And the ſaid Richard further ſays, that the ſaid Edward Gibbon, being ſo ſeiſed of the ſaid manor, with the appurtenances, at the ſaid court leet and court baron of the ſaid manor, holden before the ſaid time when, &c. to wit, on the ſaid twenty-fifth of November 1774, the ſaid Richard was choſen and named by the ſaid jurors of the ſaid court to be hayward of the ſaid waſtes or commons of the ſaid tithing of B. for the then next ſucceeding year, or until he ſhould be diſcharged by due courſe of law; and was then and there ſworn by the ſaid R. Andrews, ſteward of the court as aforeſaid, well and truly to execute the office of hayward for the within ſaid tithing for the year next enſuing, or until he ſhould be diſcharged by due courſe of law; and becauſe the ſaid cattle of the ſaid plaintiffs at the ſaid time when, &c. were in the ſaid common or waſte, called G. Lane, within the ſaid manor, in which, &c. without a driver, eating the graſs there growing, the ſaid Richard, being ſuch hayward as aforeſaid, well avows the taking of the ſaid cattle in the ſaid place in which, &c. and juſtly, &c. as a diſtreſs for the damage then and there doing, and until the ſaid plaintiffs ſhould pay a reaſonable ſum for the ſame, and this, &c.; wherefore, &c.

THOS. WALKER.

Plea in bar to firſt avowry, *de injuria*, and traverſe of preſcription to hold courts, &c. &c. and tender of amends.

[1ſt. *De injuria ſua*, and traverſe of the preſcription to hold courts, and for the jury to make rules, &c. *and to preſent thoſe things which to the ſaid court belong.* 2d. *De injuria ſua*, and traverſe of the preſentment made by the jury for regulating the commons. 3d. *De injuria ſua*, and traverſe of the cuſtom laid to appoint the haywards. 4th, Proteſting that F. G. is not ſeiſed, and againſt the above-mentioned preſcription and cuſtom, *de injuria ſua abſque reſidua cauſæ.*]: And for further plea in this behalf, as to the ſaid avowry of the ſaid Richard firſt above named by leave, &c. ſay, that he the ſaid Richard ought not to avow the taking of the ſaid cattle in the ſaid declaration mentioned to be juſt, becauſe they ſay that after impounding the ſaid cattle in the ſaid declaration mentioned, that is to ſay, on the thirteenth of February 1775, at the pariſh of B aforeſaid, they the ſaid plaintiffs did tender and offer to pay to the ſaid Richard ſo being hayward of the ſaid manor as aforeſaid the ſaid ſum of two ſhillings, being one ſhilling for each of the ſaid colts, which the ſaid Richard then and there refuſed to accept and receive from the ſaid plaintiffs; and the ſaid Richard, of his own wrong, unjuſtly kept and detained the ſaid cattle againſt ſureties and pledges until, &c. (*modo et forma*), &c.; and this, &c.; wherefore, &c. [6th, 7th, 8th, and 9th like the four firſt pleas to the firſt avowry, *mutatis mutandis.*]

F. BULLER.

I have

I have added a plea of tender to the firſt avowry, becauſe it is requeſted; but I much doubt the propriety of it, for the general rule is, that a tender after impounding *has no effect*. However, this caſe differs from others in two very material circumſtances; viz. that the ſum is certain, and the cuſtom ſtated is only to impound till payment of that ſum, and therefore it may not be amiſs to take the opinion of the court upon the point, eſpecially as it will not prevent plaintiffs from availing themſelves of any other defence they can make.

F. Buller.

DECLARATION for taking a ſpit at Oakley, in a place called the Houſe, &c.

Cognizance (for taking a ſpit) as bailiffs of A. B. that the houſe in which, &c. was held of the manor of C. whereof A. B was lord by fealty and doing ſervice at the court baron, that the plaintiff being ſeiſed of the houſe, and the lord intending to hold a court baron, of which the plaintiff had notice, but he did not appear; whereby the lord was prevented from holding a court, wherefore the defendants well acknowledge the taking as a diſtreſs, &c.

And the ſaid F. and R. by A. B. their attorney, come and defend the force and injury, when; &c. and as bailiffs of T. C. eſquire, well acknowledge the taking of the ſaid ſpit in the ſaid place in which, &c. juſtly, &c.; becauſe they ſay, that the ſaid place called the Houſe, in which, &c. is, and at the ſaid time when, &c. and long before, was a certain ancient meſſuage in Oakley aforeſaid, in the holding of the ſaid ſir P. C. and that the ſaid ancient meſſuage in which, &c. with the appurtenances, on the third of February 1746, and long before, was held of the ſaid T. C. eſquire, as of his manor of M. otherwiſe, &c. with the appurtenances, in the county aforeſaid, by fealty and the yearly rent of three pounds, payable at the feaſts of the nativity of St. John the Baptiſt and St. Martin the Bleſſed, in winter, by equal portions, and alſo by the ſervice of doing ſuit at the court baron of the ſaid manor, held and to be held from three weeks to three weeks within the ſaid manor, of which ſaid manor the ſaid T. C. eſquire, on the ſame day and year laſt-mentioned, and continually from thence until at and after the ſaid time when, &c. was and ſtill is ſeiſed in his demeſne as of fee: And the ſaid defendants further ſay, that the ſaid ancient meſſuage in which, &c. with the appurtenances, ſo being in the holding of the ſaid ſir P. C. and the ſaid T. C. eſquire, ſo being ſeiſed of the ſaid manor, with the appurtenances, in his demeſne as of fee, he the ſaid T. C. eſquire, long before the ſaid time when, &c. and long before the third of February 1746, that is to ſay, on twenty-ſeventh of January 1746, at O. aforeſaid, did intend to hold a court baron in and for his ſaid manor on the third of February 1746, of which the ſaid ſir P. C. afterwards, and before the ſaid third of February 1746, to wit, on the twenty-ſeventh of January 1746, at O. aforeſaid, had notice, and was then and there in due manner ſummoned to appear at the ſame court ſo intended to be held as aforeſaid, and that the ſaid ſir P. C. did not on the ſaid third of February 1746, appear at the ſame court ſo there intended to be held in and for the ſaid manor, but to appear wilfully neglected and refuſed, and made default, by reaſon whereof the ſaid T. C. was then prevented and hindered from holding a court baron in and for the ſaid manor; and becauſe the ſaid ſuit of court at the intended court of the ſaid T. C. eſquire of his manor aforeſaid ſo intended to be held in and for the

ſaid manor, on the third of February 1746, was not done and performed, they the ſaid defendants, as bailiffs of the ſaid T. C. well acknowledge the taking of the ſpit in the ſaid place called the Houſe, in which, &c. as in the ſaid ancient meſſuage, with the appurtenances, held of the ſaid T. C. in form aforeſaid for the ſaid ſuit at the ſaid intended court ſo undone and unperformed, and juſtly, &c. according to the form of the ſtatute in ſuch caſe made and provided, and the ſaid ſuit of court ſtill remains undone and unperformed: And the ſaid defendants, by leave, &c. as bailiffs of the ſaid T. C. eſquire, well acknowledges, &c. and juſtly, &c. becauſe they ſay, that the ſaid place called the Houſe, in which, &c. is, and at the ſaid time when, &c. and long before was a certain ancient meſſuage in O. then in the holding of the ſaid ſir P. C. and that the ſaid meſſuage in which, &c. with the appurtenances, at the ſaid time when, &c. and long before, was held of the ſaid T. C. eſquire, as of his manor of M. otherwiſe, &c. with the appurtenances, in the county aforeſaid, by fealty and the yearly rent of three pounds payable half-yearly at the feaſt of the nativity of St. John the Baptiſt and St. Martin the Bleſſed, in winter, by equal portions, and alſo by the ſervice of doing ſuit at the court baron of the ſaid manor, held and to be held from three weeks to three weeks within the ſaid manor, of which ſaid manor the ſaid T. C. at the ſaid time when, &c. and long before was, and ever ſince hath been, and ſtill is ſeiſed in his demeſne as of fee, and that the ſaid ſir P. C. long before the ſaid time when, &c. entered into the ſaid ancient meſſuage, with the appurtenances, and was ſeiſed thereof in his demeſne as of fee; and becauſe the fealty of the ſaid ſir P. C. to the ſaid T. C. eſquire, at the ſaid time when, &c. was not made, they the ſaid defendants, as bailiff of the ſaid T. C. well acknowledges the taking of ſaid ſpit in the ſaid place called the Houſe in which, &c. as in the ancient meſſuage, with the appurtenances, held of the ſaid T. C. as aforeſaid as a diſtreſs for the ſaid fealty not made, and juſtly, &c. according to the form of the ſtatute in ſuch caſe made and provided, and the ſaid fealty ſtill remains unmade: And the ſaid defendants, by like leave, &c. as bailiffs of the ſaid T. C. well acknowledge the taking, &c. and unjuſtly, &c.; becauſe they ſay, that the ſaid place called the Houſe, in which, &c. is, and at the ſaid time when, &c. and long before was a certain ancient meſſuage in O. aforeſaid, in the holding of the ſaid ſir P. C. and that the ſaid ancient meſſuage in which, &c. with the appurtenances, on the feaſt of St. John the Baptiſt 1747, and for the ſpace of one year then laſt paſt and more, was held of the ſaid T. C. eſquire, as of his manor of M. otherwiſe, &c. with the appurtenances, in the county aforeſaid, by fealty and the yearly rent of three pounds payable at the feaſt of the nativity of St. John the Baptiſt and St. Martin the Bleſſed, in winter, by equal portions, and alſo by the ſervice of doing ſuit at the court baron of the ſaid manor held and to be held from three weeks to three weeks within the ſaid manor, of which ſaid manor the ſaid T. C. eſquire, during

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all that time, and continually from thence until and at the ſaid time when, &c. was and ſtill is ſeiſed in his demeſne as of fee; and becauſe three pounds for the rent aforeſaid for one year ended on the feaſt of St. John the Baptiſt 1747 at that feaſt in that year, and alſo at the ſaid time when, &c. was due and in arrear to the ſaid T. C. and unpaid, they the ſaid defendants, as bailiffs of the ſaid T. C. well acknowledge the taking the ſaid ſpit in the ſaid houſe in which, &c. as in the ſaid ancient meſſuage, with the appurtenances, held of the ſaid T. C. in form aforeſaid, and juſtly, &c. as a diſtreſs for that rent ſo being due, in arrear, and unpaid to the ſaid T. C. according to the form of the ſtatute in ſuch caſe made and provided, and the ſaid rent ſtill remains unpaid.

S. PRIME.

Plea in [illegible] that no court baron was held and that the [illegible] had not been ſeiſed of the place in which, &c. for the ſpace of forty years and traverſe the holding by fealty.

And the ſaid ſir P. C. as to the ſaid cognizance of the ſaid defendants firſt above mentioned, ſays, that for the reaſons therein firſt above-mentioned, the ſaid defendants, as bailiffs of the ſaid T. C. ought not to acknowledge the taking of the ſaid ſpit in the ſaid place in which, &c. to be juſt; becauſe he ſaith, that on the third of February 1746, no court baron in and for the ſaid manor was held, whereby he the ſaid ſir P. C. could do or perform any ſuit of court; and this, &c.; wherefore ſince the ſaid defendants have above acknowledged the taking of the ſaid ſpit in the ſaid place in which, &c. the ſaid ſir P. C. prays judgment and his damages, by reaſon of the unjuſt taking and detaining thereof, to be adjudged to him, &c.: And the ſaid ſir P. C. as to the cognizance firſt above made, for further plea in bar in this behalf, by leave, &c. ſays, that for the reaſons in this behalf above alledged, the ſaid defendants, as bailiffs of the ſaid T. C. ought not to acknowledge the taking of the ſaid ſpit in the ſaid place in which, &c. to be juſt; becauſe he ſays, that neither the ſaid T. C. nor any other whoſe eſtate he hath, or at the ſaid time when, &c. had of and in the ſaid manor, with the appurtenances, was ſeiſed at any time within *forty years* next before the ſaid taking of the ſaid ſpit in the ſaid place in which, &c. of the ſaid ſervices in the ſaid firſt cognizance mentioned; and this, &c.; wherefore, &c.: And the ſaid ſir P. C. as to the ſaid cognizance firſt above made, for further plea by leave, &c. ſaith, that for the reaſons in this behalf above alledged, the ſaid defendants, as bailiffs of the ſaid T. C. ought not to acknowledge the taking of the ſaid ſpit in the ſaid place in which, &c. to be juſt; becauſe he ſays, that he the ſaid ſir P. C. at the ſaid time when, &c. held the ſaid meſſuage, with the appurtenances, in which, &c. of the ſaid T.C. as of his manor aforeſaid, by the rent of one ſhilling only payable every year, payable at the feaſt of Pentecoſt only; without this, that the ſaid meſſuage in which, &c. (Traverſe of the holding by fealty, &c.) *modo et forma*, &c.; and this, &c.; wherefore, &c. [Plea to 2d cognizance ſame as 3d to 1ſt cognizance; 1ſt Plea to 3d cognizance ſame as 3d to 1ſt cognizance; 2d Plea to ditto ſame as 2d to ditto]: And the ſaid ſir P. C. as to the ſaid cognizance thirdly above

Vide 23. Hen. 8. c. 42. 8. Co. Rep.

above made, for further plea by leave, &c. ſaith, that for the reaſon before alledged, the ſaid defendants, as bailiffs of the ſaid T. C. ought not to acknowledge the taking of the ſaid ſpit in the ſaid place in which, &c. to be juſt; becauſe he ſaith, that at the time of taking the ſaid ſpit in the ſaid declaration mentioned, and before the impounding thereof, that is to ſay, on the ſaid eighth of September 1747, at O. aforeſaid, in the ſaid county, the ſaid ſir P. C. was ready at the ſaid meſſuage in which, &c. and did then and there tender and offer to pay to the ſaid defendants, ſo being the bailiffs of the ſaid T. C. as aforeſaid, the ſaid three pounds ſo alledged to be due and in arrear to the ſaid T. C. for the rent aforeſaid, which they then and there refuſed to accept and receive from the ſaid ſir P. C. nevertheleſs the ſaid defendants of their own wrong, at the ſaid time when, &c. unjuſtly detained the ſaid ſpit in manner and form as the ſaid ſir P. C. hath in his ſaid declaration above alledged; and this, &c.; wherefore, &c.

E. BOOTLE.

DECLARATION for taking goods and chattels in a certain meſſuage, warehouſe, or ſhop, ſituate in the pariſh of St. James, Clerkenwell, in the county of Middleſex.

Cognizance for of a quarter year's rent, a whole half 's rent.

And the ſaid John Gotobed, by A. B. his attorney, comes and defends the force and injury, when, &c. and as bailiff of one Thomas Horn well acknowledges the taking of the ſaid goods and chattels in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſays, that the ſaid John Birkley, for three quarters of a year next before and ending at and upon the twenty-fifth of March laſt paſt, the ſame being the feaſt-day of the Bleſſed Virgin Mary in the year of Our Lord 1789, commonly called Lady-day, and continually from thence until and at the ſaid time when, &c. held and enjoyed the ſaid place in which, &c. amongſt other premiſes, as tenant thereof to him the ſaid Thomas Horn under a demiſe thereof to him made by the ſaid Thomas Horn at the yearly rent of one hundred pounds of lawful money of Great Britain, payable to the ſaid Thomas quarterly, to wit, at the four moſt uſual feaſts or days of payment in the year, that is to ſay, Chriſtmas-day, Lady-day, Michaelmas-day, and Midſummer-day, by even and equal portions, and during all the time aforeſaid held the ſaid place in which, &c. amongſt other premiſes, as tenant thereof to the ſaid Thomas at the yearly rent aforeſaid; and becauſe ſixty-ſix pounds ten ſhillings of the rent aforeſaid for part of one quarter of a year's rent due on the twenty-ninth day of September laſt, the ſame being the feaſt of St. Michael the Archangel, commonly called Michaelmas-day, and for the whole of one half-year's rent due on the twenty-fifth day of March now laſt paſt, the ſame being the feaſt-day of the Annunciation of the Bleſſed Virgin Mary, commonly called Lady-day, the other part of the ſaid quarter's rent, ending at Michaelmas 1788, having been before paid at and upon

the ſaid twenty-fifth of March laſt paſt, and at the time of the taking of the ſaid goods and chattels in the ſaid place in which, &c. were and ſtill remains due, in arrear, and unpaid to the ſaid Thomas Horn from the ſaid John Birkley, he the ſaid John Gotobed, as bailiff of the ſaid Thomas Horn, well acknowledges the taking of the ſaid goods and chattels in the ſaid place in which, &c. juſtly, &c. for and in the name of a diſtreſs for the ſaid rent ſo due and in arrear from the ſaid John Birkley to the ſaid Thomas Horn as aforeſaid, which ſaid rent ſtill remains due, in arrear, and unpaid; and this, &c.; wherefore, &c. S. LE BLANC.

If avowry is for part of a quarter of a year's rent, it is neceſſary to ſhew how the reſt is ſatisfied. BULL. NI. PRI. 56.

ASTILL *againſt* CLARKE, AND ANOTHER.

AND the ſaid William and Robert, by Thomas Pryor their attorney, come and defend the force and injury, when, &c. and as bailiffs of Daniel, earl of Nottingham, well acknowledge the taking of the ſheep aforeſaid in the ſaid place in which, &c. and juſtly, &c.; becauſe they ſay, that the ſaid place in which the taking of the ſheep aforeſaid is ſuppoſed to be is, and at the ſaid time when, &c. was the ſoil and freehold of him the ſaid Daniel, earl of Nottingham; and becauſe the ſheep aforeſaid, at the ſaid time when, &c. was in the ſaid place in which, &c. eating up the graſs there then growing, and doing damage to the ſaid earl there, the ſame William and Robert, as bailiffs of the ſaid earl, and by his command at the ſaid time when, &c. well acknowledge the taking of the ſheep aforeſaid in the ſaid place in which, &c. and juſtly, &c. ſo doing damage there, &c. Cognizance damage feaſa

And the ſaid John Aſtill ſays, that the ſaid William Clarke the younger, and Robert Varnham, for the reaſon before alledged, as bailiffs of the ſaid Daniel, earl of Nottingham, the taking of the ſheep aforeſaid in the ſaid place in which, &c. ought not to acknowledge juſt; becauſe he ſays, that long before the ſaid earl of Nottingham had any thing in the ſaid place in which, &c. the lady Elizabeth, late queen of England, was ſeiſed in her demeſne as of fee, in her right of her dutchy of Lancaſter, of and in the manor of Daventry, in the ſaid county of Nottingham, with the appurtenances, whereof the ſaid place in which, &c. then was parcel; and being ſo thereof ſeiſed, ſhe the ſaid lady queen Elizabeth, on the twenty-ſixth day of March, in the eighteenth year of her reign, by her letters-patent under the great ſeal of England ſealed, bearing date at Weſtminſter the ſaid twenty-ſixth day of March, in the eighteenth year of her reign aboveſaid, of her ſpecial grace, for herſelf, her heirs, and ſucceſſors, gave and grant- Bar to the c nizance, that fore A B. any thing in place in whi &c. Queen E zabeth was ed in fee in of her dutch Lancaſter, granted by letters-paten under the ſeal to the c poration of ventry a ma in the place which, &c. two fairs, a the letters-

tent appears; by virtue whereof the corporation were ſeiſed. Then they ſay, that at one of the the plaintiff bought the ſheep, and paid for the toll thereof, and had the ſheep in his cuſtody taken away by the defendants.

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ed to the bailiff, burgeſſes, and commonalty of the borough of Daventry, in the county of Northampton, and their ſucceſſors, that they from henceforth for ever ſhould have and hold, and might have and hold within the borough aforeſaid, the precincts and liberties of the ſame, two markets or fairs yearly to be held and kept there, to wit, one fair on Tueſday next after the feaſt of Eaſter continually for two days from thence next enſuing to continue, and one day of the fair of St. Matthew the Apoſtle, and continually for two days thence next enſuing to continue, together with a court of pie-powder, and with all profits, commodities, and emoluments whatever from ſuch markets or fairs, coming, happening, ariſing, or contingent, and with all liberties and free cuſtoms to ſuch markets or fairs belonging or appertaining, as by the letters-patent aforeſaid, which the ſame John ſealed under the great ſeal of England here in court produces, more fully appears; by virtue of which ſaid grant, the ſaid bailiff, burgeſſes, and commonalty of the borough of Daventry aforeſaid, and their ſucceſſors, were ſeiſed and yet are ſeiſed as of fee and right, in the right of their corporation aforeſaid, of and in a fair yearly to be held on the ſaid place in which, &c. called the High-ſtreet, within the borough of Daventry aforeſaid on the ſaid Tueſday next after the feaſt of Eaſter, and continually for two days thence next enſuing, and of and in another fair yearly to be held on the day of St. Matthew the Apoſtle, and continually for two days from thence next enſuing, with all liberties and free cuſtoms to ſuch fairs belonging: And the ſame John further ſays, that at a fair held in the ſaid place in which, &c. within the borough of Daventry aforeſaid, in full and open fair there bought of a certain perſon unknown the ſheep aforeſaid, and the cuſtomary toll for ſheep in that fair bought, payable then and there to the ſaid bailiff, burgeſſes, and commonalty of the borough of Daventry aforeſaid paid; whereupon the ſheep aforeſaid then and there in the cuſtody of him the ſaid John lawfully being, they the ſaid William and Robert, that ſheep of him the ſaid John in the ſaid place in which, &c. in that fair, then took and unjuſtly detained, in manner and form as the ſaid John above againſt them complains; and this the ſame John is ready to verify; wherefore for that the ſaid William and Robert, the taking of the ſheep aforeſaid above acknowledges, the ſame John prays judgment and his damages, by reaſon of the taking and unjuſt detention of that ſheep, to be adjudged to him, &c.

Demurrer. And the ſaid Robert Varnham and William Clarke ſay, that the plea aforeſaid of the ſaid John Aſtill above in bar to the cognizance aforeſaid pleaded, they have no neceſſity, nor are they by the law of the land obliged to anſwer; and this they are ready to verify; wherefore for want of a ſufficient plea of the ſaid John in this behalf, the ſaid William and Robert pray judgment and a return of the ſheep aforeſaid, together with their damage, &c. to be adjudged to them, &c.

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And the ſaid John, for that he hath above alledged ſufficient matter in law for him the ſaid John to maintain his action aforeſaid againſt the ſaid William and Robert had, which ſaid matter the ſaid William and Robert do not deny, nor in anywiſe anſwer to it, but altogether refuſe to admit that averment, prays judgment and his damages, by reaſon of the taking and unjuſt detention of the ſheep aforeſaid, to be adjudged to him, &c.; and becauſe, &c. Joinder.

In this caſe the queſtion was, whether the grant under the great ſeal of a privilege in dutchy lands out of a dutchy were good? or, whether it ought not to have been under the dutchy ſeal? And. after great deliberation, the Court gave judgment for the plaintiff that it was.

WRITS, &c. DECLARATIONS, &c. AND DETACHED PROCEEDINGS.

SURRY, to wit. James Tickner, late of the pariſh of, &c. in the county aforeſaid, yeoman, was attached to anſwer to Harman Tickner in a plea why he took the goods, cattle, and chattels of him the ſaid plaintiff, and unjuſtly detained them againſt ſureties and pledges, &c.; and thereupon the ſaid plaintiff, by A. B. his attorney, complains that the ſaid James, on, &c. in the twentieth year of the reign of his majeſty king George the Third, now king of Great Britain, &c. &c. at the pariſh of, &c. in, &c. took the goods, cattle, and chattels of him the ſaid plaintiff, to wit, a parcel of oats unthreſhed and ſome peaſe, ſix acres of barley ſtanding, four other acres of barley mowed, four acres of other barley ſtanding, and four acres of beans ſtanding, and unjuſtly detained them againſt ſureties and pledges until, &c. whereby the ſaid plaintiff ſaith that he is injured, and hath damage to the value one hundred pounds; and therefore he brings his ſuit. Declaration in C. B. Replevin for taking plaintiff's oats, barley, peaſe, beans, &c.

And the ſaid James, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſays, that the ſaid declaration of the ſaid plaintiff in manner and form aforeſaid made and declared, and the matters therein contained, are not ſufficient in law for the ſaid plaintiff to have or maintain his ſaid action againſt him the ſaid James; and that he the ſaid James has no need, nor is he bound by the law of the land to anſwer the ſaid declaration in manner and form aforeſaid made and declared; and this he is ready to verify; wherefore for want of a ſufficient declaration in this behalf, the ſaid James prays judgment, and that the ſaid plaintiff may be barred from having his ſaid action againſt him the ſaid James; and for cauſes of demurrer in law, the ſaid James, according to the form of the ſtatute in ſuch caſe made and provided, aſſigns to the court here the cauſes following, that is to ſay, for that the ſaid plaintiff hath not in or by his ſaid declaration alledged or ſhewn in what particular place or places within the pariſh of, &c. the ſaid James took the ſaid goods, cattle, and chattels Demurrer to declaration, that the *locus in quo* is not properly deſcribed, nor the number or kind of cattle ſpecified.

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in the ſaid declaration mentioned, or any part, nor hath ſpecified or ſhewn in his ſaid declaration the number or kind of the cattle by that declaration alledged and ſuppoſed to have been taken by the ſaid James; by means whereof the ſaid plaintiff artfully endeavours to prevent the ſaid defendant from making a proper defence; and alſo for that the ſaid declaration is in other reſpects uncertain, defective, and informal. W. LAMBE.

Under, that the declaration is inſufficient.

And the ſaid plaintiff, foraſmuch as he hath above declared a ſufficient matter in the law to have and maintain his ſaid action againſt the ſaid James, which he is ready to verify; which ſaid matter the ſaid James hath not denied or given any anſwer thereto, but entirely refuſed to admit the verifying the ſame, the ſaid plaintiff prays judgment and his damages, by occaſion of the premiſes, to be adjudged to him, &c.

NASH GROSE.

In replevin, the plaintiff ought to alledge a certain place of taking, Yelv. 178. Hob. 16 Cro. Eliz 896. Moor, 678. 1. Brownl. 176 For this notifies to what the defendant ſhould make title, Cro. Eliz. 896.; and the place, as well as town, is traverſeable, 1. Sid. 10. Hob 16. But the omiſſion of it after verdict is helped, 1. Sid. 10. & 20. Hob. 16. Wilſ 355.

Demurrer, for that the *locus in quo* is not deſcribed in the declaration.

For that it is not alledged, nor does it appear by the ſaid declaration of the ſaid plaintiff, when or in what particular place or places in the ſaid pariſh in the ſaid declaration mentioned, the ſaid goods and chattels in the ſaid declaration mentioned, or any part thereof, were taken, whereby the ſaid defendant is totally prevented from making a proper defence to the ſaid declaration, and for want of naming or mentioning in the ſaid declaration the place or places where the ſaid goods and chattels, or any part thereof, are above ſuppoſed to have been taken, the ſaid defendant is prevented from taking any iſſue upon the place of taking, &c. and alſo for that the ſaid declaration is in ſundry other reſpects uncertain, inſufficient, and wants form, &c.

General demurrer to an avowry and cognizance.

AND the ſaid P. W. ſays, that the ſaid avowry of the ſaid avowant, and the cognizance of the ſaid cognizees by them reſpectively above made, and the matters therein contained, are not ſufficient in law for the ſaid avowant in his own right to avow, or the ſaid cognizees, as bailiffs of the ſaid avowant, to acknowledge the ſaid taking of the ſaid cattle in the ſaid place in which, &c. to be juſt; to which ſaid avowry and cognizance in manner and form as the ſame is above made and ſet forth, he the ſaid plaintiff is not under any neceſſity, or in anywiſe bound by the law of the land to anſwer; and this, &c.; wherefore for want of a ſufficient avowry and cognizance in this behalf, the ſaid plaintiff prays judgment and his damages, by him ſuſtained on occaſion of the taking and unjuſt detaining of the cattle aforeſaid, to be adjudged to him, &c.

FOR

FOR that it does not appear by the ſaid cognizance when or in what manner the ſaid rent became due and in arrear from the ſaid plaintiff to the ſaid defendant, nor for what time, and for that it doth not appear, nor is it averred by the ſaid cognizance that the ſaid rent, or any part thereof, is ſtill in arrear and unpaid.

Demurrer to a cognizance, for that it is not ſhewn how the rent came due, nor that any was in arrear.

FOR that the ſaid defendants have not, in or by their ſaid avowry and cognizance, ſhewn any title to the ſaid place in which, &c. in the ſaid A. B. (one defendant) or in any other perſon under whom the ſaid defendant holds the ſame as tenant at will, nor have they ſhewn or ſet out who is ſeiſed in fee thereof, or in what perſon or perſons the freehold thereof is ſuppoſed to be, and for that the ſaid avowry and cognizance is altogether vague, uncertain, inſufficient, and wants form.

Cauſe of demurrer to an avowry, for that the tenant at will has not ſhewn who has the freehold.

And the ſaid Daniel ſays, that the ſaid avowry of the ſaid Thomas by him the ſaid Thomas above made, and the matter therein contained, are not ſufficient in law to bar the ſaid action of the ſaid Daniel, or to avow the ſaid taking of the ſaid mare to be juſt, or to have a return thereof to which ſaid avowry in form aforeſaid made and pleaded, he the ſaid Daniel has no occaſion, nor is he bound by the laws of this realm to anſwer; and this he is ready to verify; wherefore for want of a ſufficient avowry in this behalf, the ſaid Daniel prays judgment and his damages, on occaſion of the ſaid taking and unjuſt detaining of the ſaid mare, to be adjudged to him, &c.: And for cauſes of demurrer in law to the ſaid avowry, the ſaid Daniel, according to the form of the ſtatute in ſuch caſe made and provided, ſhews to the court here theſe cauſes following, to wit: for that the ſaid avowry avers the taking of the ſaid mare, and yet varies from the declaration of the ſaid Daniel, in relation to the place of taking, whereas by the laws of this realm, if the ſaid Thomas would have denied the place of taking mentioned in the declaration, he ſhould have pleaded the ſame by way of plea in abatement to the *declaration* (*a*), and then made a ſuggeſtion for having a return of the ſaid mare; and alſo for that the ſaid Thomas avows the taking of the ſaid mare upon a poſſeſſory title only of the place wherein he alledges the ſame was taken, and for that the ſaid avowry is no anſwer to the ſaid declaration, nor does is any way admit or deny the ſame, and is pleaded in bar, which is wholly idle and repugnant, and for that the ſaid avowry is uncertain, inſufficient, and wants form.

Demurrer to an avowry, for that it ſtates another *locus in quo* than that mentioned in the declaration, when it ſhould have been by way of plea in abatement, and that he avows upon poſſeſſory title.

(*a*) This muſt mean where the proceedings have been removed; if the action had been commenced in the ſuperior court, in ſuch caſe it ſeems that the plea ſhould pray judgment of the writ, of which the declaration is only a copy, and that praying judgment of the declaration would be bad upon a ſpecial demurrer.

The plaintiffs beſt way in this caſe is to demur as above. The avowry is wholly bad, and were you not to demur, the merits are againſt you; for tender of amends muſt be made before the impounding, and is of no effect afterwards, Lutw. 1596.

In declarations in replevin, there muſt always be a place of taking certainly deſcribed, for the avowant muſt admit the caption to be in the place mentioned in the declaration, in order to ſhew the cauſe of taking it there, for if the avowant ſhould lay the taking in another place than the plaintiff hath done, without traverſing the place mentioned in the declaration, it would be altogether bad, becauſe the avowant would neither confeſs and avoid, nor traverſe; the declaration thereſore would be nugatory. Gilb. Repl. 196. If a declaration of caption in *Black Acre*, and the defendant pleads in abatement of the Count, that he took them in *White Acre* abſq. hoc. that he took them in Black Acre, this will abate the Count under that form, but then he muſt go on and make cognizance, becauſe not diſaffirming plaintiff's title to the beaſts, he leaves the plaintiff a right to diſtrain, but this cognizance is not traverſable where it is pleaded in abatement, becauſe the plaintiff muſt maintain the form of his own Count, without falling on the title of the defendant, and if the plaintiff ſhould join iſſue on the traverſe in the plea of abatement, and traverſe the cognizance alſo, it would be double, and therefore bad upon ſpecial demurrer; and if plaintiff traverſed the cognizance only, it would be a diſcontinuance of the plea in abatement; but if a juſtification for damage feaſant had been pleaded in bar there, the caption and detention, according to the form of the writ, is acknowledged; therefore the plaintiff may traverſe the title of the defendant, becauſe the defendant having acknowledged the caption and detention, according to the form of the Count, he hath put himſelf upon the ſtrength of his own title, Gilb. Rep. 171, 2, 3; when the place is material. Vide Strange 507. As to the cauſe of demurrer for avowing upon a poſſeſſory title, it is laid down as law, that the leſſee who poſſeſſ s *nomine alieno*, hath no more than a precarious poſſeſſion, which is either good or bad, according to the eſtate of him in whoſe right he poſſeſſes; therefore, if he doth not ſhew an eſtate to entitle himſelf to make the diſtreſs, it is bad, for it diſcovers the right to ſhew only a term, and not a freehold, out of which it is derived. It is only the freeholder, or his bailiff or perſon deriving under him that hath an authority to take another man's beaſts upon the ſoil, for a ſtranger who is no bailiff of a freeholder is a treſpaſſer; therefore if a perſon doth not ſhew in his avowry that he doth it in his own right, or by whoſe right, he doth not ſhew any right to take ſuch diſtreſs; but if the plaintiff, inſtead of taking the beaſts in his own hands for a compenſation of damage, ſhall ſeek reparation by action of treſpaſs, quare clauſum fregit (as in ſuch caſe he only claims a compenſation for the damage done to his poſſeſſion), he need only ſhew his poſſeſſion, unleſs the defendant ſhew a right to the land itſelf.

T. WARREN.

8. 18.
Lob. 16.
Moor, 678.
Co. Eliz. 196.

Pro. Eliz. 370.
Mod. Cas. 103.
Vent. 227.
Salk 92.
Carth. 139.
Co. Abr. title
Rep. 31. 45.

LANCASHIRE, to wit. [Set out the declaration.]

Record to replevin in the common pleas at Lancaſter, with ſpecial imparlances, judgment by default, *de retorno habendo*, award of ſuch writ, and return that the goods were eloigned.

And the ſaid Edward thereupon prays a day to plead in bar to the ſaid avowry of the ſaid Henry, until the firſt day of the now next ſeſſion of aſſizes to be holden in and for the county of L. aforeſaid, and he has it, &c.; at which ſaid firſt day of the ſaid next ſeſſions of aſſizes, to wit, at the ſeſſions of aſſizes holden at Lancaſter aforeſaid, on Thurſday, the ſixteenth day of March, in the ninth year of the reign of our ſaid lord the now king, before William lord Mansfield, chief juſtice of the ſaid lord the king of his court of King's Bench at Weſtminſter, and H. B. eſquire, one of the juſtices of our ſaid lord the king of his court of C. B. at Weſtminſter, juſtices of our ſaid lord the king at Lancaſter, come as well the ſaid Henry as the ſaid Edward by their attornies aforeſaid; and the ſaid attorney prays that the ſaid Henry may plead in bar

bar to the cognizance of the ſaid Henry; and thereupon the ſaid Edward hath, till the day of March, in this ſame ſeſſion, given him by the court here to plead in bar to the ſame cognizance, the ſame day is given to the ſaid Henry here, &c. at which day come here before his majeſty's juſtices of his ſaid ſeſſion of aſſizes, to wit, at Lancaſter aforeſaid, the ſaid Henry, by his attorney aforeſaid, and the ſaid Edward, although ſolemnly called, doth not appear, nor hath he pleaded in bar to the ſaid cognizance of the ſaid Henry, nor doth he further proſecute his ſaid writ againſt the ſaid Henry; therefore it is conſidered by the court here that the ſaid Edward take nothing by his aforeſaid writ, but that he and his pledges to proſecute be in mercy, &c. and that the ſaid Henry do go thereof without day, for ever diſmiſſed therefrom, and that he have a return of the ſaid goods and chattels, &c.; and thereupon the ſaid ſheriff is commanded that without delay he cauſe to be returned the ſaid goods and chattels to the ſaid Henry, and that he doth not deliver the ſame to the ſaid Edward without his majeſty's writ, which ſhall make expreſs mention of the aforeſaid judgment, and that in whatſoever manner he ſhall have executed the ſaid writ, he ſhall certify to his majeſty's juſtices at Lancaſter the firſt day of the now next ſeſſions of aſſizes there to be held, the ſame day is given to the ſaid Henry there, &c.; at which day of the ſaid next ſeſſion, to wit, at the ſeſſion of aſſizes of our ſaid lord, holden at Lancaſter aforeſaid, on the day of , in the ninth year aforeſaid, before and juſtices of our ſaid lord the king at Lancaſter aforeſaid, comes the ſaid Henry by his aforeſaid attorney, and the ſheriff, to wit, , now ſheriff of the county of Lancaſter aforeſaid, returns to the court here that the goods and chattels aforeſaid have been before the coming in of the ſaid writ eloigned to places unknown to the ſaid ſheriff, ſo that he cannot cauſe the ſame, or any part thereof, to be delivered to the ſaid Henry, as by the ſaid writ he was commanded, &c.

Writ *de retorno habendo* awarded.

GEORGE the Third, by the grace of God, of Great Britain, &c. To the ſheriff of Lancaſter, greeting: Whereas H. T. was ſummoned to be in our court of the ſeſſion of aſſizes at Lancaſter, holden on Saturday, the thirteenth day of Auguſt, in the eighth year of our reign, before our juſtices at Lancaſter, to anſwer E. P. of a plea, &c. [here inſert the declaration down to "againſt ſureties and pledges until, &c."] and the ſaid H. T. came into our ſeſſion of aſſize there holden before our ſaid juſtices at L. aforeſaid, and defended the wrong and injury when, &c. [here inſert the avowry or cognizance to the end]; and ſuch proceedings were thereupon afterwards had in our ſaid court at Lancaſter aforeſaid, on Saturday, the ſixteenth day of March, in the ninth year aforeſaid, before our juſtices at L. aforeſaid, it was conſidered in and by our ſaid court, that the ſaid E. P. ſhould take nothing by his ſaid writ, but that he and his pledges to proſecute ſhould be in mercy, and that the ſaid H. T. ſhould go thereof without day

for ever diſmiſſed therefrom, and that he ſhould have a return of the ſaid goods and chattels as by the record and proceedings thereof, in our ſaid court at L. aforeſaid, more fully appears; therefore we command you, that without delay you cauſe the ſaid H. T. to have a return of the ſaid goods and chattels, and that you do not deliver them on the complaint of the ſaid Edward without our writ, which ſhall make expreſs mention of the judgment aforeſaid, and how you ſhall execute this our writ, certify to our juſtices at L. on the firſt day of the now next ſeſſion of aſſizes to be held, and have there this writ.

Writ upon a judgment *de retorno habendo* irrepleviable in the common pleas.

GEORGE the Third, by the grace of God, of Great Britain, &c. To the ſheriff of Surry, greeting: Whereas M. D. was lately ſummoned to be in our court before our juſtices of the bench at Weſtminſter, to anſwer T. H. in a plea; for that the ſaid M. D. on, &c. at, &c. [recite the declaration and avowry to the end]; and thereupon the ſaid T. H. being ſolemnly called to plead in bar to the ſaid avowry of the ſaid M. D. came not, but made default, nor did he further proſecute his ſaid writ, and ſuch proceedings were there thereupon afterwards had in our ſaid court of the bench aforeſaid, at W. aforeſaid, that afterwards, to wit, in Hilary term, in the eleventh year of our reign, it was conſidered in and by our ſaid court of the bench aforeſaid, that the ſaid T. H. ſhould take nothing by his ſaid writ, but that he and his pledges to proſecute ſhould be in mercy, and that the ſaid M. D. ſhould depart our ſaid court thereof without day, and that he ſhould have a return of the ſaid goods and chattels, to hold the ſame to her irrepleviable, &c. as by the record and proceedings thereof remaining in our ſaid court, before our juſtices of the bench aforeſaid, at Weſtminſter aforeſaid, more fully appears; therefore we command you, that without delay you cauſe the ſaid M. D. to have a return of the ſaid goods and chattels, to hold the ſame to her irrepleviable for ever, and how you ſhall have executed this our writ, certify to our ſaid juſtices of the bench aforeſaid, at Weſtminſter aforeſaid, in three weeks of Eaſter now next coming, and have you there then this writ. Witneſs ſir William De Grey, knight, at Weſtminſter, the twelfth day of February, in the eleventh year of our reign.

Writ upon a judgment *de retorno habendo* in an hundred court.

KINGSTON Court, to wit. To E. R. bailiff of the ſaid court, greeting: Whereas D. G. was ſummoned to be in the ſaid court of the ſaid hundred and liberty, to anſwer J. E. of a plea; wherefore on, &c. in the twenty-eighth year of the reign of his preſent majeſty king George the Second, &c. at, &c. within the juriſdiction of the ſaid court, in a certain place called B. he took the cattle of the ſaid J. E. to wit, twenty-three ſheep, of the value of ſeven pounds, and unjuſtly detained them againſt ſureties and pledges until, &c.; and the ſaid D. G. by A. B. his at-

attorney, afterwards came into the ſaid court, and defended the force and injury, when, &c. and well avowed the taking of the cattle aforeſaid in the ſaid place in which, &c. and juſtly, &c.; becauſe he ſaid, that the ſaid cloſe called B. in which the taking of the twenty-three ſheep was ſuppoſed to be, did contain in itſelf eight acres of land at C. aforeſaid, within the juriſdiction aforeſaid; of which ſaid cloſe, with the appurtenances, one T. D. eſquire, deceaſed, was ſeiſed in his demeſne as of fee, and being ſo thereof ſeiſed on, &c. in the ſeventeenth year of the reign of, &c. at, &c. demiſed the ſaid cloſe, with the appurtenances, unto the ſaid D. G. to have and to hold to the ſaid D. G. from then next enſuing, by and during, and unto the full end and term of twenty-one years from thence next enſuing, and fully to be complete and ended; by virtue of which ſaid demiſe the ſaid D. G. entered into the ſaid cloſe, with the appurtenances, before the time when, &c. and was thereof poſſeſſed; and becauſe the ſaid cattle aforeſaid, at the ſaid time when, &c. were in the ſaid cloſe in which, &c. treading down and eating up the graſs and corn there then growing, and doing damage there, &c. the ſaid D. G. well avowed the taking of the ſaid cattle in the ſaid place in which, &c and juſtly, &c. ſo doing damage there; and that he was ready to verify; wherefore he prayed judgment and a return of the cattle aforeſaid, together with his coſts and damages in this behalf ſuſtained, according to the form of the ſtatute in ſuch caſe made and provided, to be adjudged to him, &c.: And ſuch proceedings were thereupon afterwards had in the ſaid plea, that afterwards at and in the ſaid court, and by the ſaid court it was conſidered and adjudged, that the ſaid J. E. and his pledges to proſecute ſhould be in mercy: and that the ſaid D. G. might part the court therein without day, and ſhould have a return of the ſaid cattle; therefore I command you, that without delay you return the ſaid cattle to the ſaid D. G. and that you do not deliver them at the complaint of the ſaid J. E. without his majeſty's writ, which ſhall expreſsly mention the ſaid judgment, and in what manner you execute this precept you make appear at the next court to be held in and for the ſaid hundred and liberty, on, &c. now next enſuing, at the Guildhall of the borough of Newport, within the juriſdiction of the ſaid court, and have you then there this precept. Given under the hand and ſeal of the ſaid court, the day of 1785. J. DICKENSON, Steward.

The cattle within-named, before the coming of the within precept, were eloigned to places unknown, ſo that I cannot make return thereof to the within-named D. G. as I am within commanded.

The bailiff's return, that goods were eloigned.

The anſwer of A. B. one of the bailiffs within-mentioned.

...ment by ...lt for want ...ce, and a... of inquiry ... sheriff of ...ges in re...

DORSET, to wit. John Williams was ſummoned, &c. [to the end of the declaration]: And the ſaid J. W. by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſays nothing in bar or denial of the ſaid action of the ſaid plaintiff, whereby plaintiff remains in the ſaid plea againſt defendant without defence, for which reaſon the plaintiff ought to recover his damages by him ſuſtained on occaſion of the premiſes aforeſaid; but becauſe it is unknown to the ſaid court here what damages the plaintiff hath ſuſtained on occaſion of the ſaid taking and unjuſt detaining of the ſaid cattle, therefore the ſheriff of Dorſet is commanded, that by the oath of twelve good and lawful men of his bailiwick, he diligently enquire what damages plaintiff hath ſuſtained as well on occaſion of the ſaid taking and unjuſt detaining of the ſaid cattle, as for his coſts and charges by him about his ſuit in this behalf expended, and that he ſend the inqueſt, which he ſhall thereupon take to our ſaid lord the king in fifteen days from the day of Eaſter, whereſoever our ſaid lord the king ſhould then be in England, under his ſeal and the ſeal of thoſe by whoſe oath he ſhall take the ſaid inquiſition, together with the writ of our ſaid lord the king to him therefore directed, the ſame day is given to the ſaid plaintiff to be there, &c.

...pearance in ...ivin by de... ...ant, and for ...ault of plain... ...judgment *de ...rno habendo.*

ESSEX, to wit. Mary Adams offered herſelf the fourth day of Auguſt againſt Mary Prior, widow, of a plea of taking and unjuſt detaining the goods and chattels againſt gages and pledges, &c.; and the ſaid M. P. did not come, &c. and was plaintiff; therefore it is conſidered that the ſaid M. P. take nothing by her aforeſaid writ, but that ſhe and her pledges of proſecuting be in mercy, &c. and that the ſaid M. A. depart the court here without day, and that ſhe have a return of the ſaid goods and chattels.

...gment *de re...* ...*habendo* for ...t of plea to ...very.

SURREY, to wit. Mary Dare, late of, &c. [to the end of the declaration and avowry]: And thereupon the ſaid Thomas being ſolemnly called to plead in bar to the ſaid avowry of the ſaid M. D. comes not, but makes default, nor doth he further proſecute his ſaid writ; therefore it is conſidered by the court here that the ſaid Thomas take nothing by his ſaid writ, but that he and his pledges to proſecute be in mercy, &c.; and that the ſaid Mary depart the court here without day thereof, and that ſhe have a return of the ſaid goods and chattels, &c. to hold the ſame to her irrepleviable.

...gment for the ...ndant *de re...* ...*habendo* for ...t of plea to ...very, with ...ts of the de... ...ce, and a... ...d of exces...

[TO the end of the declaration and avowry]: And thereupon the ſaid cognizees pray that the ſaid plaintiff may plead in bar to the ſaid cognizance of the ſaid defendants, and thereupon a day is given to the ſaid plaintiff to plead in bar to the ſaid cognizance of the ſaid defendants, before our lord the king until in fifteen days of

of St. Martin, whereſoever, &c. the ſame day is given to the ſaid defendants at the ſaid place, &c. at which day, before our lord the king at Weſtminſter, come the ſaid defendants by their ſaid attorney, and the ſaid plaintiff although ſolemnly called doth not come, but makes default, neither has he pleaded in bar to the ſaid cognizance of the ſaid defendants, nor doth he further proſecute his ſaid writ; therefore it is conſidered by the court here, that the ſaid plaintiff take nothing by his ſaid writ, but that he and his pledges to proſecute be in mercy, &c.; and that the ſaid defendant depart the court here without day thereof, and that they have a return of the ſaid goods and chattels; and it is further conſidered by the court here that the ſaid defendants do recover againſt the ſaid plaintiff pounds for their coſts and charges by them about their defence in this behalf expended adjudged to the ſaid defendants, and with their aſſent by the court here according to the form of the ſtatute in ſuch caſe made and provided, and that the ſaid defendants have execution thereof.

Writ of [illegible] of yearly charge much in [illegible]

And the ſaid plaintiff, although ſolemnly called to plead to the ſaid cognizance of the ſaid defendants, doth not come, but makes default; therefore it is conſidered that the ſaid defendants do go thereof without day, &c.; and thereupon the ſaid defendants, according to the form of the ſtatute in ſuch caſe made and provided, pray a writ of our ſaid lord the king to be directed to the ſheriff of the county of S. aforeſaid, to enquire of the ſum in arrear of the yearly rent-charge aforeſaid, and the value of the goods and chattels above ſpecified, and it is granted them, &c.; therefore it is commanded to the ſheriff of the county aforeſaid, that by the oath of twelve honeſt and lawful men of his bailiwick, he diligently enquire how much of the yearly rent-charge aforeſaid was in arrear to the ſaid W. W. at the time of the taking of the ſaid goods and chattels, and how much thoſe goods and chattels ſo as aforeſaid taken and diſtrained were worth, according to the true value thereof, which he ſhall take thereupon, he now manifeſt here on the morrow of All Souls, under his ſeal and the ſeals of, &c. at which day, &c. come here the ſaid defendants by their attorney aforeſaid; and the ſheriff, to wit, A. B. eſquire, returns here an inquiſition taken before him at the houſe of E. F. in the county of S. aforeſaid, on the day of now laſt paſt, by the oath of twelve good and lawful men of his bailiwick, by whom it is found that at the time of the taking of the ſaid goods and chattels the ſum of pounds of the yearly rent-charge in the cognizance aforeſaid mentioned to be due to the ſaid W. W. was and is in arrear, and that the goods and chattels aforeſaid taken and diſtrained as aforeſaid, according to the true value thereof, were then worth the ſum of pounds; therefore it is conſidered that the ſaid defendants recover of the ſaid plaintiff the ſum of pounds, being the value of the ſaid goods and chattels ſo diſtrained in part of ſatisfaction of the ſaid ſum

of pounds, as by the ſaid inquiſition aforeſaid in form aforeſaid found in arrear, and the damages by reaſon of the premiſes to pounds, by the court here adjudged to the ſaid defendants at their requeſt, for their coſts and charges by them about their ſuit in this behalf expended, according to the form of the ſtatute in ſuch caſe made and provided, which ſaid value, damages, coſts, and charges, amount in the whole to pounds, and that they the ſaid defendants have execution thereof.

Writ of inquiry and return upon judgment for the avowant, de quo habendo [illegible] *want of a* [illegible] *to his a-* [illegible]*ry, as ſur-* [illegible]*g joint-te-* [illegible] *and tenant* [illegible]*retalty.*

GEORGE the Third, by the grace of God, &c. To the ſheriff of S. greeting: Whereas F. A. heretofore, to wit, in Eaſter term, in the eighteenth year of our reign, was ſummoned to be in our court before us to anſwer unto A. O. in a plea, wherefore the ſaid F. A. on, &c. at, &c. in your county, in a certain tenement and dwelling-houſe of the ſaid A. O. ſituate in a certain place called Dirty-lane, in the ſaid pariſh, there ſituate, ſtanding, and being, took the goods and chattels, to wit, &c. &c. [ſet out the goods] of the ſaid A. O. and unjuſtly detained them againſt ſureties and pledges until, &c.; and thereupon the ſaid F. A. afterwards, to wit, in Michaelmas term, in the nineteenth year of our reign, came into our ſaid court before us, by A. B. his attorney, and then and there defended the wrong and injury, when, &c. and well avowed the taking of the ſaid goods and chattels in the ſaid declaration mentioned, in the ſaid dwelling-houſe in which, &c. and juſtly, &c.; becauſe he ſaid, that the ſaid A. O. for a long ſpace of time, to wit, for the ſpace of one half year next before and ending on the feaſt-day of A. D. 1778, and from thence until and at the ſaid time when, &c. held and enjoyed the ſaid dwelling houſe in which, &c. with the appurtenances, under a demiſe thereof thentofore made to him the ſaid A. O. by the ſaid F. A. and one P. M. deceaſed, in the lifetime of the ſaid P. M. and whom he the ſaid F. A. had ſurvived, at and under the yearly rent of ſix pounds ſix ſhillings, payable half-yearly by even and equal portions: And the ſaid F. A. in fact ſaid, that after the making of the ſaid demiſe, and before the ſaid time when, &c. to wit, on, &c. at, &c. the ſaid P. M. died, and that he the ſaid F. A. had ſurvived him, to wit, at the pariſh aforeſaid; and becauſe a large ſum of money, to wit, the ſum of three pounds three ſhillings of the rent aforeſaid, due and payable from the ſaid A. O. for one half year of the ſaid term, ending after the death of the ſaid P. M. whom he the ſaid F. A. had ſurvived as aforeſaid, to wit, on the feaſt of , on that day, and from thence until and at the ſaid time when, &c. was in arrear and unpaid, he the ſaid F. A. well avowed the taking of the ſaid goods and chattels in the ſaid declaration mentioned, in the ſaid dwelling-houſe in which, &c. and juſtly, &c. for and in the name of a diſtreſs for the ſaid rent ſo due and payable, in arrear and unpaid as aforeſaid: And the ſaid F. A. in fact further ſaid, that the ſaid three pounds

Avowry for half [illegible]*'s rent in* [illegible] *under a* [illegible]*e, to the* [illegible]*ntiff of the* [illegible]*ling-houſe,* [illegible]*he avowant* [illegible]*one P. M.* [illegible]*ſed, who* [illegible]*e avowant ſur-* [illegible]*d.*

three

three ſhillings ſo due and payable as aforeſaid, then remained and was in arrear and unpaid to him the ſaid F. A. to wit, at, &c.; and this, &c.; wherefore, &c.; and a return of the ſaid goods and chattels, together with his damages, according to the form of the ſtatute in ſuch caſe made and provided, to be adjudged to him: And for further avowry in this behalf, he the ſaid F. A. by leave of, &c. according to, &c. well avowed the taking, &c. &c. [this avowry exactly the ſame as the firſt, only make it to pay the rent "quarterly" inſtead of "half yearly"]: And for further avowry in this behalf, he the ſaid Francis, by leave of, &c. according to, &c. well avowed the taking of the ſaid goods and chattels in the ſaid declaration mentioned, in the ſaid dwelling-houſe in which, &c. and juſtly, &c.; becauſe the ſaid A. O. for a long ſpace of time, to wit, for the ſpace of half a year next before and ending on the feaſt of , and from thence until and at the ſaid time when, &c. held and enjoyed the ſaid dwelling-houſe in which, &c. with the appurtenances, under a demiſe thereof thentofore made by the ſaid F. A. to him the ſaid A. O. at and under the yearly rent of ſix pounds ſix ſhillings, payable half yearly by even and equal portions, and during all that time held and enjoyed the ſame of the ſaid F. A. by virtue of the ſaid demiſe, as his tenant thereof, and that becauſe a large ſum of money, to wit, the ſum of three pounds three ſhillings of the rent aforeſaid, due and payable from the ſaid A. O. to the ſaid F. A. for a long time, to wit, for the ſpace of half a year of the ſaid term, ending on the feaſt of on that day, and from thence until and at the ſaid time when, &c. was in arrear and unpaid to the ſaid F. A. he the ſaid F. A. well avowed the taking of the ſaid goods and chattels in the ſaid declaration mentioned, in the ſaid dwelling-houſe in which, &c. and juſtly, &c. as for and in the name of a diſtreſs for the ſaid rent ſo due and payable in arrear and unpaid as aforeſaid: And the ſaid F. A. further ſaid, that the ſaid three pounds three ſhillings of the rent aforeſaid then remained and was in arrear and unpaid to him the ſaid F. A. to wit, at, &c.; and this, &c.; wherefore, &c. and a return, &c. [There was another avowry upon a demiſe made by himſelf, only the plaintiff in replevin for rent payable "quarterly" inſtead of "half yearly," being the like difference as between the firſt and ſecond avowries], and upon this the ſaid F. A. prayed that the ſaid A. O. might plead in bar of the ſaid ſeveral avowries of him the ſaid F. A.; and thereupon a day is given to the ſaid A. O. for him the ſaid A. O. to plead in bar to the ſaid ſeveral avowries on , in the nineteenth year of our reign, wherefoever, &c. the ſame day was given to the ſaid F. A. &c.; at which day, before us at Weſtminſter, came the ſaid F. A. by his attorney aforeſaid, and offered himſelf againſt the ſaid A. O. in the plea aforeſaid; but the ſaid A. O. although ſolemnly called, did not come, but made default, nor did he further proſecute his ſaid ſuit againſt the ſaid F. A.; therefore it was conſidered that the ſaid F. A. ſhould go thereof without day, &c. and that the ſaid A. O. and his pledges to proſecute ſhould be in mercy, &c. and that

2d Avowry under a demiſe to pay the rent quarterly.

3d Avowry on a demiſe the avowant alone, for rent in arrear payable half-yearly.

4th Avowry the 2d, only the avowant only.

Day is given to plead to the avowry.

Default.

Judgment *de retorno habendo*.

that the ſaid F. A. ſhould have a return of the goods and chattels aforeſaid; but becauſe the ſaid F. A. according to the form of the ſtatute in ſuch caſe made and provided, hath prayed our writ to be to you directed, to enquire of the arrears of the ſaid yearly rent of ſix pounds ſix ſhillings, and alſo the value of the goods and chattels aforeſaid; therefore we command, that according to the form of the ſtatute in that caſe made and provided, you diligently enquire by the oath of twelve good and lawful men of your county how much of the ſaid yearly rent was in arrear and unpaid to the ſaid F. A. at the ſaid time when, &c. and how much the goods and chattels aforeſaid were then worth, according to the true value thereof, and the inquiſition which you ſhall thereupon take ſend to us on the morrow of the Holy Trinity whereſoever, &c. under your ſeal and the ſeals of thoſe by whoſe oath you ſhall take that inquiſion, together with this writ. Witneſs, &c.

Inquiry.

Record of a judgment for the avowant in replevin, for want of a plea in bar to avowry for rent in arrear, [where the proceedings had been removed out of the county court, to wit, by *re. fa. lo.*] and after the ſheriff's return to the writ of inquiry, finding the value of the goods diſtrained to be leſs than the rent diſtrained for judgment for the value of the goods and coſts.

SURREY, to wit. A. V. puts in his place A. B. his attorney againſt F. A. in a plea of taking and unjuſtly detaining the goods and chattels of the ſaid A. V. againſt ſureties and pledges. Surrey, to wit. F. A. put in his place C. D. his attorney, at the ſuit of the ſaid A. V. in the plea aforeſaid. Surrey, to wit. Be it remembered, that heretofore, to wit, at the county court of J. L. eſquire, ſheriff of the county of Surrey, holden in and for the ſaid county, at, &c. on, &c. before, &c. free ſuitors of the ſame court, the ſaid A. V. without the writ of our ſaid lord the king, levied his certain plaint againſt the ſaid F. A. of a plea of taking and unjuſtly detaining the goods and chattels of him the ſaid A. V. againſt ſureties and pledges, which ſaid plaint was then and there recorded in the ſaid court ſo holden as aforeſaid, by virtue of a certain writ of *recordari facias loquelam*, returnable before our lord the king whereſoever, &c. on, &c. in Eaſter term, in the eighteenth year aforeſaid; and thereupon, by virtue of the ſaid writ, the record of the ſaid plaint was had into the ſaid court of our ſaid lord the king before the king himſelf at Weſtminſter, in the ſaid , in Eaſter term aforeſaid, at which day, before our lord the king at Weſtminſter, came as well the ſaid A. as the ſaid F. by their attornies aforeſaid, and the ſaid A. by his attorney complains, that, &c. [here copy the count part of the declaration]. And now at this day, that is to ſay, on Friday next after the morrow of All Souls, in Michaelmas term, in the nineteenth year of the reign of our ſaid lord the king, until which day the ſaid F. had leave to imparle to the ſaid declaration, and then to anſwer the ſame, &c. before our lord the king at Weſtminſter, come as well the ſaid A. as the ſaid F. by their attornies aforeſaid, and the ſaid F. by his ſaid attorney, defends the wrong and injury, when, &c. and well avows, &c. [here copy the whole of the avowry]. And upon this the ſaid F. prays that the ſaid A. may plead in bar of the ſaid avowry of him the ſaid F. and thereupon a day is given to the ſaid F. for him the ſaid A. to plead in bar of the ſaid avowry on , where-

whereſoever, &c. the ſame day is given to the ſaid F. &c.; at which day, before our lord the king at Weſtminſter, comes the ſaid F. by his attorney aforeſaid, and offers himſelf againſt the ſaid A. in the plea aforeſaid; but the ſaid A. although ſolemnly called, doth not come, but maketh default, nor doth he further proſecute his ſaid ſuit againſt the ſaid F. therefore it is conſidered, that the ſaid F. do go thereof without day, &c. and that the ſaid A. and his pledges to proſecute be in mercy, &c. and that the ſaid F. have a return of the goods and chattels aforeſaid, &c.; and upon this the ſaid A. according to the form of the ſtatute in ſuch caſe made and provided, prays the writ of our ſaid lord the king to be directed to the ſheriff of the ſaid county of Surrey, to enquire of the arrears of the yearly rent aforeſaid, and alſo of the value of the goods and chattels aforeſaid, and it is granted him, &c. therefore it is commanded to the ſaid ſheriff of the county of S. aforeſaid, that, according to the form of the ſtatute, he diligently enquire by the oath of twelve good and lawful men of his county, how much of the ſaid yearly rent in the ſaid avowry mentioned was in arrear and unpaid to the ſaid F. at the ſaid time when, &c. and how much money the goods and chattels aforeſaid were then worth, according to the true value of the ſame; and that the inquiſition which the ſaid ſheriff ſhould thereupon take he ſhall ſend to our ſaid lord the king on next after whereſoever, &c. under his ſeal and the ſeals of thoſe by whoſe oath he ſhall take that inquiſition, together with the writ of our ſaid lord the king to him thereupon directed, the ſame day is given to the ſaid F. &c. at which day, before our ſaid lord the king at Weſtminſter comes the ſaid F. by his attorney aforeſaid, and the ſheriff of S. hath not ſent the ſaid writ, nor hath he done any thing thereon; whereupon, as before, it is commanded to the ſaid ſheriff, that, &c. [as before] the ſame day is given to the ſaid Francis, &c. at which day, before our ſaid lord the king at Weſtminſter, comes the ſaid F. by his attorney aforeſaid, and the ſaid ſheriff of the ſaid county of S. to wit, , now returns here a certain inquiſition taken before him at , on , by the oath of twelve good and lawful men of his county, whereby it is found that three pounds three ſhillings of the ſaid yearly rent was in arrear and unpaid to the ſaid F. at the ſaid time when, &c. and that the goods and chattels aforeſaid were then worth fifty ſhillings, according to the true value of the ſame; therefore it is conſidered that the ſaid F. do recover againſt the ſaid A. the ſaid fifty ſhillings, parcel of the rent aforeſaid, by the inquiſition in form aforeſaid found, and his damages by reaſon of the premiſes to twenty-five ſhillings by the court of our ſaid lord the king now here adjudged to the ſaid F. and at his requeſt, for his coſts and charges by him in this behalf ſuſtained, according to the form of the ſtatute in ſuch caſe made and provided, which ſaid value, coſts, and charges in the whole amount to pounds, and that he the ſaid F. have execution thereof.

(a) In county court removed by *re fa. lo.*

GEORGE

Scire facias against the bail, replevin in the common pleas, where the proceedings had been removed by *recordari facias loquelam* out of the county court, and afterwards the sheriff returned *eloingati* a writ *retorno habendo* upon a judgment for want of a declaration in the common pleas to shew why those goods should not be taken in lieu of those eloigned.

GEORGE the Third, by the grace of, &c. To the sheriff of Hampshire, greeting: Whereas Richard Rogers and David Rogers heretofore, to wit, on, &c. in the sixteenth year of our reign, came before J. W. esquire, late sheriff of our county of Southampton, out of the county court of the said J. W. and made their complaint to him so then being such sheriff as aforesaid, of the said county, against H. S. G. esquire, in a plea of taking and unjustly detaining the goods and chattels of them the said R. R. and D. R. at T. to wit, in the said county, that is to say, a parcel of wheat in the straw, a parcel of barley in the straw, a waggon, &c. against sureties and pledges, and prayed the said J. W. so being such sheriff of the county as aforesaid, that the goods and chattels aforesaid might be replevied and delivered to them the said R. R. and D. R. and thereupon the said R. R. and D. R. according to the form of the statute in such case made and provided, afterwards, to wit, on, &c. in the sixteenth year aforesaid, found pledges for prosecuting their said plaint, and for making a return of the said goods and chattels, if a return thereof should be adjudged, that is to say, J. F. of, &c. gentleman, G. H. of, &c. farmer, and W. P. of, &c. gentleman; and thereupon, at the request of the said R. R. and D. R. to the said J. W. so then being such sheriff of the said county as aforesaid, the said goods and chattels were replevied, and delivered to the said R. R. and D. R. which plaint to the sheriff with all things touching the same, afterwards, to wit, at the county court of the said J. W. sheriff of the county aforesaid, held at the castle of Winchester, in and for the county of Southampton aforesaid, on, &c. in the year of our reign, before, &c. then free suitors of the said court, in the names of the said R. R. and D. R. were returned by the said J. W. the then sheriff of the said county; and afterwards, to wit, at the county court of the said J. W. sheriff of the county aforesaid, held at the castle of Winchester, in and for the county of S. aforesaid, on, &c. in the year of our reign, before , then free suitors of the said court, the said then sheriff in his full county court, by virtue of our writ of *recordari facias loquelam* issuing out of our high court of chancery at Westminster to him directed, and returnable before our said justices of the bench aforesaid here, to wit, at Westminster aforesaid, caused the said plaint between the said R. R. and D. R. and the said H. S. G. of the said taking and unjustly detaining the goods and chattels of the said R. R. and D. R. against sureties and pledges, &c. to be recorded, the said record of which said plaint the said then sheriff had by virtue and according to the tenor of our said writ, under his seal and the seals of four lawful knights of his said county, of such as were present at the said record, which said sheriff then also returned that he had by virtue of the said writ prefixed the same day to the parties that they might be there ready to proceed in the said plaint as should be just, execution of which writ was done at the petition of the said H. S. G.

(a) See *scire facias*, proceedings in, *post*.

as by the ſaid writ of *recordari facias loquelam* remaining in our court of the bench at Weſtminſter, reference being thereto had, may appear, and which plaint with all things touching the ſame are now remaining in our court before our juſtices of the bench at Weſtminſter ‡: And whereas the ſaid H. S. G. was duly ſummoned by the ſaid J. W. the ſheriff of our ſaid county, to be in our ſaid court before our juſtices at the return of the ſaid writ of *recordari facias loquelam*, to anſwer to the ſaid R. R. and D. R. in the plaint aforeſaid, to wit, of a plea wherefore he took the goods and chattels of them the ſaid R. R. and D. R. that is to ſay, the ſaid parcel of wheat, &c. of the ſaid R. R. and D. R. and them unjuſtly detained againſt ſureties and pledges, &c. as it was ſaid; and whereupon the ſaid H. S. G. in Hilary term in the ſeventeenth year of our reign, duly offered himſelf the fourth day againſt the ſaid R. R. and D. R. in the plea aforeſaid, and the ſaid R. R. and D. R. afterwards, to wit, in the ſame Hilary term, in the ſeventeenth year aforeſaid, although ſolemnly demanded, did not, nor did either of them come, but made default, wherefore afterwards, to wit, in the ſaid Hilary term, in the ſeventeenth year aforeſaid, it was conſidered in the ſame court of the bench that the ſaid H. S. G. ſhould go thereof without day, &c. and that the ſaid R. R. and D. R. and their pledges to proſecute be in mercy, &c. and that the ſaid H. S. G. ſhould have a return of the goods and chattels aforeſaid, &c. as by the record thereof now remaining in the ſaid court of the bench at Weſtminſter may appear: And whereas we lately commanded the ſaid J. W. the ſheriff of the county aforeſaid by our writ, that the aforeſaid goods and chattels to the aforeſaid H. S. G. without delay he ſhould cauſe to be returned, and them at the plaint of the aforeſaid R. R. and D. R. he ſhould deliver, not without our writ, which ſhould make expreſs mention of the aforeſaid judgment, and how he ſhould execute that our command he ſhould make appear to our juſtices at Weſtminſter in eight days of the Purification of the Bleſſed Virgin Mary, and that he ſhould have there then that writ, and he at that day certified to our ſaid juſtices in the ſaid writ named, that before his receiving the ſaid writ the goods and chattels in the ſaid writ mentioned, whereby the ſaid R. R. and D. R. eloigned to places to him the ſaid ſheriff unknown, ſo that he was not able to make return thereof to the ſaid H. S. G. in the ſaid writ named, as by the ſaid writ he the ſaid then ſheriff was commanded, as by the ſaid writ and return thereof aſſiled in our ſaid court, before our ſaid H. S. G. that although judgment be given therein, yet juſtices of the bench at Weſtminſter aforeſaid, it appears to us of record, and now we have received information in our ſaid court of the bench at Weſtminſter aforeſaid, on the part of the execution as to the return of the ſaid goods and chattels remains to be done to the ſaid H. S. G.; wherefore the ſaid H. S. G. hath beſought to provide him a proper remedy in this caſe, and we be-

(a) In the county court below, removed by *re. fa. la.*

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ing willing that what is juſt ſhould be done therein, do command you that by honeſt and lawful men of your bailiwick you make it known to the ſaid J. F. H. H. and W. P. that they be before our juſtices at Weſtminſter, to ſhew if they have, or if either of them hath or knoweth of any thing to ſay for themſelves or himſelf, why the goods and chattels of the ſaid J. F. H. H. and W. P. to the value of the ſaid goods and chattels ſo replevied and delivered to the ſaid R. R. and D. R. ſhould not be delivered to the ſaid H. S. G. if it ſhall ſeem expedient for them ſo to do, and have you there the names of thoſe by whom you ſhall make it known to them, and this writ. Witneſs, &c. J. MORGAN.

Scire facias againſt bail in replevin upon a judgment in the common pleas *de retorno habendo* for want of plea to the avowry, after the ſheriff's return *elongat* ito ſhew why their own goods ſhould not be taken in lieu of thoſe eloigned.

GEORGE the Third, [as in the laſt precedent to this mark ‡, then proceed as follows]: And whereas the ſaid J. R. was duly ſummoned by the ſaid J. B. and H. K. then ſheriff of the ſaid county of Middleſex, to be in our ſaid court before our juſtices of the bench at Weſtminſter at the return of the ſaid writ of *recordari facias loquelam*, to anſwer the ſaid B. G. R. in the plaint aforeſaid, that is to ſay, of a plea wherefore he took the aforeſaid goods and chattels of the ſaid B. G. R. and unjuſtly detained the ſame againſt ſureties and pledges, &c.: And whereas the ſaid J. R. afterwards, to wit, in the ſaid Eaſter term, in the nineteenth year aforeſaid, duly offered himſelf the fourth day againſt the ſaid B. G. R. in the plea of the aforeſaid plaint, and thereupon the ſaid B. G. R. in the ſaid Eaſter term, in the nineteenth year aforeſaid, in our court before our juſtices of the bench at Weſtminſter, declared againſt the ſaid J. R. in the ſaid plea of the plaint aforeſaid; and thereupon the ſaid J. R. in our court before our juſtices of the bench at Weſtminſter, the ſame Eaſter term, in the nineteenth year aforeſaid, as bailiff of T. G. and J. G. for a certain reaſon by him alledged in the ſaid court before our juſtices of the bench at Weſtminſter, well acknowledged the taking of the goods and chattels in the place in which, &c. to be juſt, for and in the name of a diſtreſs for fifty pounds rent, due and in arrear from the ſaid B. G. R. to the ſaid T. G. and J. G. for one year, ending on the feaſt day of , in the nineteenth year aforeſaid, for the meſſuage or dwelling-houſe in which the taking of the aforeſaid goods and chattels was done, with the appurtenances, and theretofore demiſed by them to the ſaid B. G. R.; and afterwards, in the ſame Eaſter term, in the nineteenth year aforeſaid, ſuch proceedings were had in our ſaid court before our juſtices of the bench at Weſtminſter, in the plea aforeſaid, that the ſaid B. G. R. although ſolemnly called to plead in bar to the ſaid cognizance of the ſaid J. R. did not come, but made default; therefore it is conſidered by the ſaid court by the ſaid juſtices of the bench at Weſtminſter, that the ſaid J. R. go thereof without day, and that the ſaid B. G. R. and his pledges to proſecute ſhould be amerced, and that the ſaid J. R. ſhould have a return of the goods and chattels aforeſaid, as by the record thereof now remaining in our ſaid court

court of the bench at Weſtminſter aforeſaid, may appear: And whereas we lately by our writ of *retorno habendo* commanded you, &c. [as in the laſt precedent *mutatis mutandis* to the end.]

V. LAWES.

The replevin in this caſe being by plaint, and not by writ, I am of opinion, that the defendant is not in the firſt inſtance entitled to a writ againſt the goods of the bail, but that he muſt ſue out ſuch *ſcire facias* as I have drawn, the intent of which is to bring the pledges into court, and give them an opportunity of conteſting why the defendant ſhould have a return of their beaſts. If the pledges cannot ſhew cauſe on *ſcire facias* being returned, or make default, you will be entitled to have a writ to have a return of the goods of the pledges upon the ſheriff's return of *nihil* to this writ, you will by ſtatute of Weſtminſter 2. be entitled to a *ſcire facias* or action againſt the late ſheriff for taking inſufficient pledges.

V. LAWES.

Middleſex, to wit. It was commanded to the ſheriff of Middleſex, that whereas B. G. R. heretofore, that is to ſay, on , in the nineteenth year of the reign of the lord the now king, had come before J. B. eſquire, and H. K. eſquire, then late ſheriffs of the county of Middleſex, out of the county court of the ſaid J. B. and H. K. and had made his complaint to them, ſo being ſuch ſheriffs as aforeſaid of the ſaid county of Middleſex, againſt J. R. in a plea of taking and unjuſtly detaining the goods and chattels of him the ſaid B. G. R. at the pariſh of , in the ſaid county of Middleſex, that is to ſay, a bath ſtove, &c. &c. [recite the *ſcire facias* throughout, then proceed thus], at which day, before the juſtices of our lord the king of the bench here, comes the ſaid J. R. by A. B. his attorney, and the ſheriff of the ſaid county of Middleſex, to wit, T. W. eſquire, and E. P. eſquire, return to the ſaid juſtices here, that by virtue of the ſaid writ to him directed, he had by H. F. and R. H. honeſt and lawful men of his bailiwick, given notice to the ſaid J. W. and E. W. to appear before the king's juſtices at the day and place in the ſaid writ mentioned, to ſhew cauſe, as by the ſaid writ they were required, and the ſaid J. R. on the fourth day offered himſelf againſt the ſaid J. W. and E. W. in the plea aforeſaid, and the ſaid J. W. and E. W. although ſolemnly demanded, do not nor doth either of them come, but do and each of them doth make default; therefore it is conſidered by the juſtices here, that the goods and chattels of the ſaid J. W. and E. W. to the value of the ſaid goods and chattels ſo replevied and delivered to the ſaid B. G. R. be delivered to the ſaid J. R. &c.

Judgment againſt the bail in replevin *de bonis propriis* upon default of appearance after ſheriff's return of *ſcire facias* upon the writ of *ſcire facias* to ſhew why their principal, having eloigned the goods replevied to him, their own goods ſhould not be taken in lieu thereof.

George the Third, by the grace of God, &c. To the ſheriff of Middleſex, greeting: Whereas heretofore, to wit, in Eaſter term, in the nineteenth year of our reign, one J. R. having been theretofore ſummoned to be in our court before the juſtices of the bench at Weſtminſter, to anſwer unto B. G. R. in a plea of a certain plaint which had been theretofore made by the ſaid B. G. R. to the then ſheriff of our county of Middleſex aforeſaid, againſt the

Writ of execution the above judgment.

ſaid J. R. of taking and juſtly detaining the goods and chattels of him the ſaid B. G. R. at the pariſh of , in the ſaid count of M. that is to ſay, a bath ſtove, &c. againſt pledges and ſureties, and on which ſaid plaint, on the ſaid B. G. R. finding pledges for proſecuting his ſaid plaint, and for making a return of the ſaid goods and chattels, if a return of the ſame ſhould be adjudged, to wit, J. W. of , in the county of Middleſex, gentleman, and E. W. of , in , broker, the ſaid goods and chattels at the requeſt of the ſaid G. R. had been replevied and delivered to him, and which plaint, with all things touching the ſame, had alſo been duly had into our ſaid court, before our juſtices of the bench at Weſtminſter, by virtue of our writ of *recordari facias loquelam*, returnable before our ſaid juſtices of the bench, at a certain day then paſt, the ſaid B. G. R. in our ſaid court, before our juſtices of the bench at Weſtminſter, declared againſt the ſaid J. R. in a plea of the ſaid plaint, to wit, of a plea wherefore he the ſaid J. R. took the aforeſaid goods and chattels of the aforeſaid B. G. R. and unjuſtly detained the ſame againſt ſureties and pledges, &c.; and thereupon the ſaid J. R. in the ſame Eaſter term, in the nineteenth year aforeſaid, as bailiff of, &c. [as in the *ſcire facias* from this mark ‡ to this mark ‡, then proceed as follows], as appears to us of record; and becauſe the ſaid goods and chattels could not be returned to the ſaid J. R. in execution of the judgment aforeſaid, by reaſon that the ſame were eloigned and removed by the ſaid B. G. R. to places to you unknown, as you yourſelf certified to our juſtices of the bench at a certain day now paſt, we lately commanded to you, that by honeſt and lawful men of your bailiwick you ſhould make it known to the ſaid J. W. and E. W. that they ſhould be before our juſtices at Weſtminſter, in eight days of St. Hilary now laſt, to ſhew if they had or knew, or if either of them had or knew of any thing to ſay for himſelf or themſelves, why the goods and cattels of the ſaid J. W. and E. W. to the value of the ſaid goods and chattels ſo replevied and delivered to the ſaid B. G. R. ſhould not be delivered to the ſaid J. R. if it ſhould ſeem expedient to them ſo to do: And whereas the ſaid J. R. at that day came into our ſaid court before our juſtices of the bench at Weſtminſter, by A. B. his attorney, and you thereupon returned to our ſaid juſtices, that by H. F. and R. H. honeſt and lawful men of your bailiwick you had given notice to the ſaid J. W. and E. W. to appear before our ſaid juſtices at the day and place laſt aforeſaid, to ſhew cauſe, as by the ſaid writ they were required; and the ſaid J. R. in this ſaid Hilary term, to wit, on the fourth day, offered himſelf againſt the ſaid J. W. and E. W. in the plea aforeſaid, and the ſaid J. W. and E. W. although ſolemnly called, did not, nor did either of them come, but made, and each of them did make default; therefore it was conſidered by our ſaid juſtices there, that the goods and chattels of them the ſaid J. W. and E. W. to the value of the ſaid goods and chattels ſo replevied and delivered to the ſaid B. G. R. as aforeſaid, ſhould be delivered to the ſaid J. R. as appears to us of record; now therefore we command

mand you, that by the oath of twelve good and lawful men of your bailiwick you diligently enquire how much the ſaid goods and chattels ſo replevied and delivered to the ſaid B. G. R. as aforeſaid were worth, according to the true value of the ſame at the time of the replevying and delivery thereof as aforeſaid, and that the goods and chattels of the ſaid J. W. and E. W. in your bailiwick, to the value of the ſaid goods and chattels ſo replevied and delivered to the ſaid B. G. R. as aforeſaid, you cauſe to be delivered to the ſaid J. R. and how you ſhall execute this our writ you make appear to our juſtices of the bench at Weſtminſter aforeſaid, in fifteen days from the day of Eaſter, under your ſeal and the ſeals of thoſe by whoſe oath you ſhall take that inquiſition, and have you there the names of thoſe by whoſe oath you ſhall take that inquiſition, and this our writ. Witneſs, &c. V. LAWES.

I have drawn the writ of execution in ſtrict conformity with the judgment, though I cannot in any of the books of Entries find one like it. According to Officina Brevium 326. and Rast. 569, the *ſcire facias* in this caſe might have been, "to ſhew cauſe why the value of the goods replevied ſhould not be made of the goods of the bail;" or according to Forteſ. 331. "why ſo many goods, or the value of them, ſhould not be tendered to the plaintiff." In either of theſe caſes a writ to enquire the value of the goods diſtrained and *ſcire facias* for the ſame might have been iſſued. But none of theſe caſes do, in my opinion, any way impeach the propriety of the preſent proceedings; on the contrary, they are warranted not only by authorities equally reſpectable as the former, 2. Inſt. 340. Theſau. Brev. 274. and Brit. Abr. 218. b. but alſo the very words of the ſtatute of Wm. 2. under which they have been had, although this ſtatute ſays, that if any one takes pledges any other way than as thereby directed, he ſhall anſwer the value of the beaſts. Yet it enacts, that the lord who made the diſtreſs ſhall recover by writ, and that the defendant reſtore ſo many beaſts or cattle. V. LAWES.

CUMBERLAND, to wit. John Railton, heretofore in the county court of the ſheriff of the county aforeſaid, held at, &c. in and for the ſaid county on, &c. before ſuitors of the ſaid court, complains againſt Iſaac Brown in a plea of taking and unjuſtly detaining the cattle of the ſaid J. R. againſt ſureties and pledges; which plaint, at the petition of the ſaid J. R. was had here on this day, that is to ſay, *from the day of Saint Michael, in three weeks in this ſame term*, by his attorney's writ of *recordari facias loquelam*, at which day come here as well the ſaid J. R. by R. H. his attorney, as the ſaid J. B. by L. C. his attorney: And hereupon the ſaid J. R. complains againſt the ſaid J. B. of the plea aforeſaid, to wit, for that the ſaid J. B. on, &c. at the pariſh of, &c. in the county aforeſaid, in a certain place there called, &c. took the cattle following, to wit, *five cows and one heifer* of the ſaid J. R. and unjuſtly detained the ſame againſt ſureties and pledges until, &c.; whereupon the ſaid J. R. ſays that he is injured, and hath ſuſtained damage to the value of twenty pounds; and therefore he brings his ſuit, &c.

Record, ſetting forth the complaint in the county court and removal. *re. fa. lo.*

SOMER-

SOMERSETSHIRE, to wit. J. P. J. W. and W. W. were ſummoned to anſwer to R. G. eſquire, of a plea wherefore they took the cattle of the ſaid R. and unjuſtly detained them againſt ſureties and pledges, &c. and thereupon the ſaid R. by J. N. his attorney, complains, that the ſaid defendants on, &c. at the pariſh of, &c. in the county aforeſaid, in a certain place there called, &c. took the cattle, to wit, *ſeven oxen, nine heifer, and four cows* of him the ſaid R. and unjuſtly detained the ſame againſt ſureties and pledges until, &c. whereupon the ſaid R. ſaith he is injured, and hath ſuſtained damage to the value of one hundred and fifty pounds; and therefore he brings his ſuit, &c.

MIDDLESEX, to wit. W. S. late of, &c. was ſummoned to anſwer E. M. widow, of a plea wherefore he took the goods and chattels of the ſaid E. and them unjuſtly detained againſt ſureties and pledges until, &c. and thereupon the ſaid E. by J. J. her attorney, complains; that the ſaid W. on the day of in the year of the reign of our ſovereign lord the now king, at, &c. in the county aforeſaid, in the dwelling-houſe of the ſaid E. there took the goods and chattels following, to wit, [ſet forth the goods] of the ſaid E. and them unjuſtly detained againſt gages and pledges until, &c. wherefore the ſaid E. ſaith that ſhe is injured, and hath ſuſtained damages to the value of forty pounds; and thereupon ſhe brings her ſuit, &c.

[illegible] the place taking, be- [illegible] it may be [illegible] ought in iſſue [illegible] without arguing [illegible] merits.

Declarations in B. R. in replevin are the ſame as the C. P. for they are ſuppoſed to be originals; and all the proceſs in replevin in B. R. are returnable *ubicunque*, &c.

If the declaration is for cattle, and goods, and chattels, they ſay, wherefore he took the cattle, goods, and chattels; and if it be for *birds or fowls*, inſert thoſe words alſo.

A. C. complains of W. J. in a plea of taking and unjuſtly detaining of the goods and chattels of the ſaid C. againſt gages and pledges, &c. and thereupon the ſaid C. by J. J. his attorney, complains, that the ſaid J. on, &c. at, &c. in certain places thereafter particularly mentioned, took the goods and chattels of the ſaid C. to wit, in a certain part thereof, &c. aforeſaid, the part next the gate, ten cart loads of wheat in the ſtraw, in a certain cloſe there called the rick yard, twenty cart loads of wheat in the ſtraw, ten card loads of peaſe in the ſtraw, ten cart loads of beans in the ſtraw, and in a certain other part there called the part adjoining the gatehouſe, five cart loads of peaſe in the ſtraw, and five cart loads of oats in the ſtraw of the ſaid A. there within the pariſh aforeſaid, and unjuſtly detained the ſame againſt gages and pledges until, &c. wherefore the ſaid A. ſaith he is injured, and hath ſuſtained damage to the value of twenty pounds; and therefore he brings ſuit, &c. Pledges, &c.

IN THE MANOR OF BINGLEY, to wit. S. M. ſpinſter, was ſummoned to anſwer to T. W. in a plea, wherefore ſhe took three pigs of the ſaid T. and them unjuſtly detained againſt ſureties and pledges until, &c. and thereupon the ſaid T. by F. S. his attorney, complains; that the ſaid S. on, &c. at Bingley aforeſaid, at a certain place there called and known by the name of Groſe Green, and within the juriſdiction of this court, took three pigs; that is to ſay, three ſows of the ſaid T. and them unjuſtly detained againſt ſureties and pledges until, &c. wherefore the ſaid T. ſaith he is injured, and hath ſuſtained damage to the value of thirty-nine pounds eleven ſhillings; and therefore he brings his ſuit, &c. Pledges, &c.

HENSON, &c. *at the ſuit of* CAMMEREY. — to wit. And the ſaid John, in his own proper perſon, comes and defends the wrong and injury, &c. and ſays, that this court here ought not to take, nor will take cognizance of the aforeſaid plea, becauſe he ſays that the ſaid John, long before the ſuing forth the original writ of the ſaid Thomas, &c. at the ſaid time of ſuing forth the ſame was, and from thence hitherto hath been, and yet is an attorney of the court of the lord the king of the bench, to wit, at Weſtminſter aforeſaid, in the county of Middleſex aforeſaid; and that he doth proſecute and defend many pleas and ſuits, and during all the time aforeſaid hath proſecuted and defended many pleas and ſuits for many true and faithful ſubjects of our ſaid lord the king in the ſaid court of the bench as their attorney; and the ſaid John ſays that he and all other attorneys of the ſaid court of the bench aforeſaid, proſecuting and defending ſuits and pleas for their clients in the ſaid court of the bench, by an ancient and laudable cuſtom uſed and approved of according to the laws and cuſtoms of this realm, and the liberties and privileges of the ſaid court of the bench aforeſaid, ought to be free and exempt from being compelled againſt their wills, and have not, nor have any of them at any time or times hitherto been uſed or accuſtomed to be compelled to anſwer any pleas or plaint in any actions perſonal (pleas of freehold, and of felony, and appeals only excepted) before any juſtices or miniſters of the lord the king, or other judges whatſoever, in any court (except before the juſtices of the lord the king of the bench aforeſaid), by bill filed in the ſaid court againſt ſuch attorney or attornies as preſent here in court; and this he is ready to verify; wherefore he prays judgment if he ought to be compelled to anſwer to the ſaid Thomas here in court to the ſaid plea, &c.

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Similar plea in abatement, and for a return; one of defendants avows, and the other, as his bailiff, makes cognizance for damage feasant in avowants freehold; replication, taking issue on the traverse to the place, - - Lill. Ent.

Plea of property in a stranger to a declaration in B. R. for taking cattle, and for a return, make cognizance as bailiffs of A. and B. for damage feasant in their freehold; replication, that the property was in the plaintiff as in the declaration and issue, - - - *Ibid.*

Avowry and cognizance for damage feasant as bailiff, the lord of the freehold; bar, that the *locus in quo* is copyhold, held of the manor of Bushey, &c.; that the defendant, being lord of the manor, granted it to the plaintiff in fee according, &c. and he being seised put in his cattle, and the defendant distrained them; replication, that the land is held of the manor of B grant by copy, yearly value, the fine, forfeiture for non-payment, protesting that the fine is unreasonable; pleads a custom to pay a year's value only, which he offered to pay; demurrer; joinder; judgment for plaintiff; inquiry awarded, - Hunt on Dist. and Rep. 264 to 5

Avowry, for damage feasant in defendant's freehold, *Ibid.*

Avowry, for damage feasant in his freehold; bar, that H. M. was seised in fee, and demised to W. L. and the plaintiff for their lives; the entry of the plaintiff, prescription for common; replication, that it is his freehold, and traverses the prescription; issue on the traverse, - - - *Ibid.*

Plea in bar to an avowry, that the plaintiff tendered to the defendant sufficient amends for the damage feasant, defendant protesting that the six shillings and eightpence was not sufficient amends; for plea, denies the tender; plaintiff rejoins, that he did tender the six shillings and eightpence, and issue, - - - - - *Ibid.*

An avowry, where the defendant traverseth the place, and saith that there are several places known by the same name, but that they are differently to be described, they having different addition; plea, that the plaintiff when, &c. and long before was possessed of a close adjoining to the place in which, &c. and that R. L. principal defendant, and all those, &c. time out of mind were used to repair the fences in *locus in quo*, &c. which divided plaintiff's close; that those fences, before the time when, &c. were out of repair, by reason whereof plaintiff's cattle escaped into the *locus in quo*; and before the plaintiff had or could have any notice thereof, defendants took the cattle; plaintiff prays judgment, and his damages, - - - *Ibid.*

Avowry, for rent accrued due in the lifetime of plaintiff's intestate, and from plaintiff as administratrix since, 1. H. Bl. Rep.

Replevin, for taking plaintiff's cow; plea, that sir G. W. seised in fee in *locus in quo*, took the cattle, damage feasant; replication, that sir G. W. the freeholder, was seised in fee, and demised to T. S. for three lives; T. S. died, and

	PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.
B. entered as occupant, and made a leaſe for one year into the plaintiff *per quod*; demurrer, cauſe that he prays judgment and damages, but does not pray a return in his replication, - - - - - -	Holt's Rep. 539.
plaintiff rejoins, that ſhe put in her cattle till the defendant took them of his own wrong, and traverſes the cuſtom to incloſe upon which traverſe iſſue is joined; verdict for the plaintiff; a new trial ordered for the miſdirection of the judge, - - - - - -	1. Wilſ. Rep. 269. b.
owry, that defendants were owners and occupiers of certain meſſuages, and preſcribe for common in the *locus in quo*, and avow damage feaſant; this is a bad preſcription,	*Ibid.* 258.
owry *in proprio jure*, and cognizance as bailiff of the earl of Eſſex, the *locus in quo*, &c. the freehold of defendant and earl took the cattle, damage feaſant; plea in bar, *locus in quo*, &c. parcel of the manor of B. whereof defendant and the earl of Eſſex are lords, and granted the *locus in quo*, &c. to plaintiff, who was admitted tenant; replication, confeſſing that the *locus in quo*, &c. parcel of the manor of B. that ſaid earl and defendant were lords granted to the plaintiff, who was admitted tenant; but the lands of the value of twenty-eight pounds *per annum* and a fine of thirty-five pounds was aſſeſſed on the plaintiff; fine reaſonable, whereby forfeiture defendant and the earl entered, and were ſeiſed in fee cattle, damage feaſant; rejoinder, proteſting fine unreaſonable; cuſtom that the fine ſhould not exceed a year's value; premiſes worth twenty-eight pounds *per annum*, which plaintiff tendered, and defendant refuſed; demurrer thereto, cauſes that the value of the land is in eſtimation, and the cuſtom uncertain; joinder; continuance; judgment for the plaintiff; inquiry awarded; the return, - - - - -	2. R. Pr. C. P. 358.
a of property in a ſtranger to a declaration in B. R. for taking cattle on a highway; replication, that property was in plaintiff as alledged in the declaration, and iſſue, jurata, &c.	*Ibid.* 357.
defendants plead property in a ſtranger to a declaration in B. C. for taking cattle; and for a return make cognizance as bailiffs of A. and B. for damage feaſant in their freehold; replication, that the property was in the plaintiff as alledged in the declaration, and iſſue, -	Lill. Ent. 358.
to avowry by demiſe of defendant, and traverſe of ſeiſin in the avowry, - - - - -	Tho. Ent. 266.
nizance, as bailiff of the tenant of the freehold of the *locus in quo*, for damage feaſant; plea in bar, that the *locus in quo* is a common, containing ſo many acres, and ſituate within the parish of H. within which plaintiff was ſeiſed in of a meſſuage and farm, with preſcriptive right of common there from twenty-fifth of March to firſt of November in each year, and that the time when, &c. was within that time, in which plaintiff had put his cattle to feed, when defendant wrongfully ſeized them; replication, repeating	

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REPORTERS, &c.

the right of freehold in W. K.; traverſes the right of common ſet up by defendant; general demurrer to replication and joinder, - - - - Pl. Aſſ. 47

Avowry, that *locus in quo* is defendant's freehold, and that he ſeized the cattle, damage feaſant; plea in bar, that R. E. was ſeiſed in fee of a cloſe called the Bakelands, and demiſed ſame to plaintiff ſo long as both parties ſhould pleaſe; that this cloſe adjoins to the fields in which, &c. and they to each other; and that from time out of mind the owners and occupiers of *locus in quo* adjoining to plaintiff's field was bound to repair the fence dividing them; but being out of repair at the ſaid time when, &c. the cattle eſcaped through, and committed the injury; rejoinder, proteſting againſt the obligation to repair ſet out in the replication; traverſes the hedges being out of repair; ſurrejoinder, taking iſſue on the traverſe, - - - - Ibid. 47

Avowry by freeholder, that he took the cattle, damage feaſant; plea in bar, that T. N. was ſeiſed in fee of a meſſuage and land in the pariſh of B. and demiſed the ſame to W. L. and K. his wife for their lives, remainder to plaintiff for life; that L. and wife died, when plaintiff became ſeiſed, and preſcribes for right of common in the *locus in quo* in right of his ſaid meſſuage and lands, &c. and alledges that defendant, *de injuria*, &c. ſeized his catttle there; replication, reaſſerting the right to the freehold, and traverſing the preſcription; rejoinder, taking iſſue on the traverſe, - - - - - Lill. Ent. 3

Cognizance, as bailiff of the lord of the manor in which a great field in *locus in quo* ſituate, where many of the tenants of the manor had common of paſture from the firſt Sunday after the tenth of Auguſt till the firſt Sunday after the ſecond of February; that there was a cuſtom, that after any one ſhall have carried off hay mown in that field, and before the firſt Sunday after the tenth of Auguſt, the lord of the manor might diſtrain cattle found there, for damage feaſant; and that the plaintiff's cattle were there in breach of the ſaid cuſtom; whereupon the defendant, as bailiff of the lord, diſtrained them, damage feaſant; plea in bar, proteſting againſt the cuſtom; for plea ſays *locus in quo* was a field within his own manor of H. and that the defendant, *de injuria*, diſtrained his cattle there, traverſing that the cloſe was within the manor mentioned in the cognizance; replication, taking iſſue on the traverſe, Ibid. 3

Avowry by freeholders for taking a gelding, damage feaſant; plea in bar, proteſting that the *locus in quo* was not defendant's freehold; ſays the plaintiff was ſeiſed of meſſuage and lands, and entitled to a preſcription right of common in the *locus in quo* for horſes levant and couchant in his tenement from the firſt Sunday after the tenth of Auguſt to the firſt Sunday after the ſecond of February in each year, and on the ſeventh of September put the gelding in queſtion to

paſture

	PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.
...ture in the *locus in quo*, when the defendant diſtrained ... ; replication, traverſing the plaintiff's right of com- ... alledged ; rejoinder, taking iſſue on the traverſe,	Lill Ent. 368.
...nizance as bailiff of the earl of Nottingham, for damage ... bar to the cognizance, queen Elizabeth was ſeiſed ... in right of her dutchy of Lancaſter, and granted two ...irs to the bailiffs, &c. of the borough of Daventry, and ... the plaintiff, at one of the ſaid fairs, bought the ſaid ...ep, and paid toll for it, and had it in his cuſtody until ... defendant unjuſtly took it, &c. ; demurrer and joinder, ... *ad vult.*	3. L. Ra. 207. N. Ed.

...izance as bailiffs, 1. *Bro.* 304. 1. *San.* 347. 2. *San.* 320. *Ro. Ent.* 141. ... *Ven.* 131. *Ru. Ent.* 561. As bailiff of huſband and wife, *Ra. Ent.* 566. *Co. ...* 589, 596. 1. *Br.* 11. As bailiff of huſband and wife in right of wife, *Ra. Ent.* 565.

... by one defendant, *non cepit* ; another makes cognizance as bailiff of dean and chapter of Glouceſter, and that the dean and chapter were *ſeiſed in fee* of it, ... *Lut.* 1131.

...gnizance as bailiff of W. B. for damage feaſant in his *freehold*, 2. *Lut.* 1140. *Clif.* 655. and licence pleaded in bar.

...wry, for damage feaſant in the *freehold* of him and the earl of Eſſex, 3. *Lev.* ...49.

...wry in right of the *wife*, *Wi. Ent.* 820. 2. *San.* 195. *Her.* 591.

...wry in his own right, and another makes cognizance as bailiff, *Tho.* 264. *Wi. ...* 862, 868, 877, 886, 906, 909, 912, 933. *M. Int.* 303. 2. *San.* 283. ... *Ri* 341, 427. 2. *Ven.* 145, 224. *Ra. Ent.* 559, 565, 572. *Co Ent.* 601. ...*ll.* 282. 3. *Br.* 276, 307. *Aſh.* 401. In right of his wife and in his own right, and another makes cognizance as his bailiff, *Vet. Int.* 242. *Upper B. P.* 93.

...wry in parcel of the *locus in quo*, *Vet. Int.* 45.

... cattle taken in divers places, *Co. Ent.* 585.

...wry by prior in right of the church, *Ra. Ent.* 574.

...wry in his own right, and makes cognizance as bailiff of another, 3. *Br.* 339.

...wry in his own right and of his wife, and makes cognizance as bailiff of E. and ..., his wife, *Ra. Ent.* 565. *Vet Int.* 94. 1. *Br.* 17. *Her.* 692.

...wry in his own right and of his *wife*, and makes cognizance as bailiff of E. ...*d.* 224.

...wry by one in right of his wife, the other makes cognizance as bailiff, 2. *San* ...3. 2. *Ven.* 225.

...wry of cattle yet detained, 1. *Bro.* 312. Of cattle taken, and many of them ... yet detained, *Mo. Int.* 304. *Ra. Ent.* 567.

...wry, but does not claim property in cattle as yet detained. Plaintiff has de- ...very, and defendant finds pledges to proſecute, *Mo. Int.* 317. *Upper B. P.* 91.

...wry of taking as well cattle in declaration mentioned as of other cattle replevied ... the ſheriff, *Mo. Int.* 342. *Ra. Ent.* 565. *Vet. Int.* 94. *Upper B. P.* 93.

...izance as bailiff, who died after laſt continuance, *Mo. Int.* 308. *Tho.* 2. ...*r.* 636.

...wry of cattle taken in the meſſuage and lands, driving and impounding them ; ...laintiff took them out of his poſſeſſion, and he retook them from the plain- ... *Mo. Int.* 327.

Avowry by defendant, and two others at the end of the avowry say that they [illegible] his servants, and come with him to diſtrain, *Ra. Ent.* 574. *Vet. Int.* 92.

Plea, *ac hic non*, juſtification by one in his own right, and the other as his [illegible] *Ra. Ent.* 554.

Avowry by one for himſelf and the other, *P.* 4. *E.* 3. 26.

For horſes harneſſed drawing in a chariot, and goods, *Ra. Ent.* 566. *Vet. Int.*

For cattle taken damage feaſant in common, *Ra. Ent.* 561.

Plea, that defendant took the cattle in a croft, and in driving them the[illegible] to the place in the declaration mentioned, from whence defendant took [illegible] afreſh, *Ra. Ent.* 556. *Vet. Int.* 92.

Plea, that defendant came to diſtrain in another place, which plaintiff perc[illegible] drove cattle into the place in declaration named, where defendant took [illegible] afreſh, *Ra. Ent.* 557. *Her.* 677.

Plea in bar to avowry, that *locus* was three cloſes, containing one hundred [illegible] land, *Mo Int.* 317.

Plea in bar to avowry, that *locus* is called as well by name of C. as of N. [illegible] 308. *Mo. Int.* 343. *Co. Ent.* 602.

Avowry for damage feaſant *in the freehold*; plea, that the place is the free[illegible] plaintiff, and not of defendant, *Pl. Gen.* 574.

Cognizance of taking cattle damage feaſant, and traverſes place of taking, [illegible] 636, 644.

Plea, traverſing the day of taking, and ſays that the place is called as well by [illegible] name of S. as of C. *Mo. Int.* 318.

Avowry, and traverſe of place of taking, *Ro. Ent.* 405.

Avowry of taking on the twenty-third day *in his freehold*, but traverſes taking [illegible] twenty-ſecond day, *Mo. Int.* 318.

Plea, that *locus* called B. contains, &c. and the barn and ſtable are parcel, [illegible] 585. 9 *Co.* 82.

Plea in bar to avowry, plaintiff ſays that *locus* contained three cloſes contain[illegible] many acres of land and meadow, *Ra. Ent.* 568. *Upper B. P.* 93. *Her.* [illegible]

Plea in bar, *non cepit* cattle, and iſſue, 1. *Bro. Met.* 312. *Mo. Int.* 325. [illegible] 1131. *Ra. Ent.* 575, 557. *Upper B P.* 93, 110.

Plea in bar, as to part, *non cepit*; to reſidue in *alio loco*, and traverſe place [illegible] in declaration; replication, that *locus* is called as well by E. as H.; rejoin[illegible] that *locus* is named by name of H. only, and traverſes that it is called as well [illegible] one name as the other, *Mo. Int.* 343. 2. *Br.* 88.

Cognizance of taking the eſtray within the manor, and detaining, &c. for plain[illegible] refuſing to pay for the paſture; replication of his own wrong, and traverſes [illegible] *in manor of fee* at the time of the taking, *B. R.* 414.

Plea, diſtrent to R. P. and avows as bailiff, damage feaſant, and traverſes that [illegible] *in quo* was parcel of the manor, *Br. R.* 324.

Plea *in bar*, that defendant was not bailiff to him for whom he makes cogni[illegible] *Pl. Gen.* 591.

Cognizance as bailiffs, damage feaſant, in lands of two joint-tenants ſeiſed [illegible] 2. *San.* 320. For damage feaſant in freehold, 1. *San.* 347.

Cognizance as bailiffs of F. lord of H. damage feaſant; *bar*, that W. W. [illegible] ſeiſed, and gave *licence*, and traverſes that it was the ſoil and freehold of [illegible] H. &c.; replication maintains the bar and iſſue, *Clift.* 655.

Plea in bar to avowry, that he took the cattle in the place in the count men[illegible] *abſque hoc*, that the ſame place is parcel of the ten acres of land ſpecified [illegible] avowry, *Pl. Gen.* 574. plea in *abatement*, that the taking of the cattle [illegible] another county, *Theſ. Br.* 5.

Plea, that plaintiff by original impleaded them in C. B. of treſpaſs, and [illegible] away two horſes, &c. and recovered forty ſhillings damages and fourteen [illegible]

, with proper averments of identity of land, horſes, gelding, and of taking and ...ining; demurrer; judgment for plaintiff, 2. *Lev.* 121, 196. Recovery in ...county court pleaded, ſetting out all the proceedings.

...ry, taking twenty-third day in freehold, and traverſes taking on the day be...e, *Her.* 628.

...n bar (to declaration for taking horſe and cart loaden with bruſh *(ſpinis)* in ...highway); that D ſeiſed of one hundred acres of wood, in which plaintiff ...the load, and would have carried it off, and defendant, as bailiff, came to ...train, damage feaſant; which plaintiff perceiving, drove cattle into highway, ...here defendant took them; replication, that plaintiff was ſeiſed of lands in ...ich he cut the load, and traverſes cutting in the one hundred acres of wood, ...677.

...ry for chattels *ſtill detained*; defendant ſeiſed of meſſuage where, &c. he took ...impounded cattle damage feaſant, which are not yet yet ſatisfied; plea, that ...endant *licenced* plaintiff to put goods in the houſe to preſerve them as long as ...choſe; replication maintains the avowry, and traverſes the licence, *Ra. Ent.*

...proteſting that *property* of cattle was in another; avows for cattle in declara...on, and to the reſt that ſheriff cauſed to be replevied to plaintiff; and after ...e joined, defendant prays return of the other cattle, and writ to ſheriff ...arded, *Ra. Ent.* 565.

...ry, for damage feaſant in the freehold; plea in bar, tender of amends; de...rrer, *Co. Ent.* 602. 1. *Br.* 160. Similar avowry; plea in bar, that before ...ivery of cattle out of the pound, plaintiff tendered two ſhillings amends to de...endant; replication, iſſue on tender, 3. *Br.* 309. To part of cattle; plea in ... that he took them in *alio lo.* to the other part, avowry on title; demurrer, ...*Ent.* 554.

...o bar, property in another for return; avowry, damage feaſant in the free...old of defendant, *Clift.* 654.

...o part *property* in T. to reſidue avows that he took them damage feaſant in ...freehold, and yet detains; plea in bar, that *property* was in plaintiff; and to ...idue, that W. being ſeiſed, *demiſed* to plaintiff at will, defendant diſſeiſed W. ...d plaintiff, under pretence of demiſe, impounded the cattle; replication, main...ning avowry, and traverſes the diſſeiſin, *Mo. Int.* 316, 340.

...ry in freehold; plea in bar, that queen Elizabeth, being ſeiſed of lands granted ...K. for years to hold from a day to come, that by meſne aſſignments came to ...intiff, replication, maintaining the avowry, and traverſes demiſe; this plea ...d bad, *Wi. Ent.* 887.

...ilar avowry; plea in bar, demiſe made to plaintiff for eighty years by A.; ...plication prays oyer of the indenture, and that Abbot, being ſeiſed without ...ſent of the convent, demiſed to plaintiff for years in letters or figures thus, ...XX.; and after ſealing the indenture, the letter L. was added to the XXX by ...intiff, which made eighty years, by which demiſe was void; replication, that ...letter L. was not added by plaintiff, and iſſue; judgment for defendant, *Mo.* ...337.

...avowry, by fine levied to J. S. which eſtate plaintiff had, *Pl. Gen.* 596.

...y, that defendant was and ſtill is ſeiſed of three acres of land in the *locus in* ... and that cattle were damage feaſant, which, &c. and prays judgment of *re*..., and damages and coſts, according to the ſtatute; demurrer, 2. *Lut.* 123

...y, that one J. M. in right of his wife, was *ſeiſed in fee* of *locus in quo*, and ...miſed to defendant for three years; plea, that immediately after the treſpaſs ...tendered amends five ſhillings, which were ſufficient; demurrer and judgment, ...*Ent.* 1584. Bar, tender of amends, *Pl. Gen.* 597.

...ry, for damage feaſant in *copyhold* lands; plea in bar by the cuſtom, that ...cuſtomary

cuſtomary tenements ought to deſcend to the youngeſt daughter, if there be ſon, and that they do ſo deſcend; replication, that the youngeſt daughter took band before any entry by them made; ſurrender and releaſe, &c. *Thes.* 126.

Avowry in right of the wife, and make conuſance as bailiffs to the other, eſſes or damage feaſant; plea in bar, that a leaſe was made by the anceſtor coheirs to one A. for ſixty-one years, who deviſed to plaintiff; replication ment made to anceſtor in tail; rejoinder, maintaining bar, and traverſes ſeoff *Pl. Gen.* 326.

Avowry, by *ſecond huſband* in right of his *wife*, by feoffment made by firſt, hu to divers feoffees for the jointure of his wife; plea in bar, that one of the fees was ſeiſed in fee, and made feoffment to the *uſe of his will*, and traverſes ment alledged by avowant, *Pl. Gen.* 540.

Avowry, damage feaſant in freehold; plea, that defendant, ſeiſed of the whereof, &c. granted cuſtomary lands to plaintiff for life; replication, pro that lands are not cuſtomary; for plea, that the abbot was ſeiſed of the to whom one R. being tenant, ſurrendered, and the whole manor came to by ſtatute of diſſolutions, who granted it to duke of N. who granted to whom it deſcended to defendant, who granted to plaintiff for life by copy, ac ing to the cuſtom; demurrer, *Wi. Ent.* 877.

Avowry, damage feaſant in the *freehold*, that R. ſeiſed of lands in Canterbur *miſed* to *huſband* and *wife* for years; R. died, and T. is inducted; huſband and wife ſurvived, who paid rent to T. which he accepted. *Wife* took plaint *huſband*, who was poſſeſſed until defendant diſſeiſed T. and expelled plaintiff, re-entered and put in cattle; replication, maintains freehold, and traverſes ſe ſin, 1. *Bro.* 311. *Mo. Int.* 340. Similar avowry; plea, that lands are *mary* and demiſeable for two lives, one in poſſeſſion, the other in reverſio other cuſtomary lands were granted to G. who took plaintiff to wife; that his death, (dying in poſſeſſion) entered, and was ſeiſed of lands as of he *bench*; replication, defendant confeſſes part of the bar, and ſeiſin of G. pleads that G. was attainted of felony, and lands forfeited to the lord of the nor; demurrer, *Wi. Ent.* 854. Judgment for defendant, *Wi. Rep.* 27.

Avowry, damage feaſant in his freehold; plea, that queen Elizabeth, ſeiſed of rectory whereof, &c. demiſed to G. for years, who deviſed the term to J. gave *licence* to plaintiff to put in his beaſts; replication, proteſting that the had nothing in the rectory at the time of the demiſe; for plea, that E. 4. ſeiſed, granted the rectory to the dean and canons of W. and pleads ſtatute of 1. Jac. for quiet enjoyment againſt plaintiff by way of eſtoppel; demurrer, *Ent.* 828.

Avowry, that G. being ſeiſed, demiſed to E. for life, and levied a fine to in tail, with divers remainders in tail to avowant; plea in bar, confeſſion of miſe to E. and fine levied to G. to ſaid uſes, with power to him in remain make leaſes for three lives or twenty-one years in poſſeſſion or reverſion, wh miſed in reverſion to plaintiff and two others for their lives, to whom E. att *Wi. Ent.* 831.

Avowry, freehold; plea in bar, that defendant, ſeiſed of the manor, granted tomary lands to T. in fee, that deſcended to his ſon, who demiſed to plain replication, that his father forfeited lands by cutting down trees; rejoinder, within the manor there was a cuſtom for copyholders to cut trees before cut certain growth, ſome of them had been before cut, and reſidue of a certain gro demurrer, *Wi. Ent.* 909.

Cognizance, as bailiff of J. for damage feaſant in the *freehold*; plea, that N. ſeiſed of tenements, &c. that deſcended to three coheireſſes; one of them licence to plaintiff to put in cattle, and traverſe that *locus in quo*, &c. was fr of J. and iſſue, *Wi. Ent.* 879.

Cogniza

...nce as bailiff of W. damage feasant in N. in which W. was seised in fee, &c. ...that king Hen. 8. seised of the manor of N. granted lands to K. in fee, from ...m they descended to G. and A. his daughters; G.'s part descended to S. ...o was seised of moiety according to custom of manor, and to plaintiff (and he ...e not state that the daughters or S. were admitted); replication, protesting that ...nds are not customary, and that the king did not grant; for plea, that ...8. was seised of lands in fee that descended to E. 6. who granted to W. ...whom they descended to R. and from him to defendant, and pleads *fine and ...claim*; demurrer thereto, *Wi. Ent.* 883.

...nance as bailiff of master and governor of hospital, &c. and that they were seised ...lands in fee in right of the hospital, and that they, as bailiffs, took the cattle, ...mage feasant; demurrer; and for causes that conusance does not shew how in...porated, but held good, 3. *Lev.* 105. that W. was seised of lands in fee, that ...scended to R. and defendant, as his bailiff, makes conusance for damage fea...t, *Wi. Ent.* 883.

...wry, that E. 4. seised of the advowson and *locus*, &c. (parcel of the priory dis...ved by statute 2. Hen. 5.) granted the advowson to dean and chapter of W. in ...and defendants, as their bailiffs, make cognizance, damage feasant; demur...er, *Wi. Ent.* 860.

...nizance as bailiff of M. damage feasant in his freehold; plea, that T. being ...ised of the manor, granted customary lands to J. deceased, and E. and M. his ...ughters, for their lives, and after death of J. entered and took plaintiff to *bus...and* by the custom of the manor first named in the copy, should have the land ...one for life, second alone, then to the third; replication, protesting that the ...ds, at the time, &c. were not customary; for plea, acknowledges that T. ...nted as in the bar, but that after the grant sold to J. in fee, who levied a fine ...of that descended to the son, who levied another fine to his own use and ...t of his wife, avowant; demurrer, *Wi. Ent.* 812. Judgment for plaintiff, ...Co. 104.

...izance in replevin, that dean and chapter of G. were seised in fee of the place ...here, &c. and the cattle, damage feasant; plea, that the dean and chapter ...ere seised, &c. of the *locus*, and also of the manor of C. and the advowson of ...carage of C. and demised them to J. V. which manor (except certain parcels, ...of) sir W. H. then had for term of years, *habendum* for ninety-nine years to ...mence by the manor after the said lease, and for the residue immediately; ...erment, that the things excepted were the said woods or ways (*vois*) and the ...vowson. J. V. grants all his interest to plaintiff, and the lease to sir W. H. ...oired on a day certain, by which he was possessed; replication, that the de...se to J. V. was with render of thirty-one pounds ten shillings and fourpence ...the manor in the occupation of sir W. H. and for the residue nine pounds ...elve shillings at the four usual feasts, and on condition of re-entry on non-...yment of rent for the space of a month; general warrant of attorney by ...dean and chapter to W. and H. to demand the rent, and to make en...s for non-payment; demand of rent on a day certain, &c. and in the ...mmon road in the said wood, and re-entry on the days after non-payment; ...ejoinder, that he was ready, &c. to pay the rent, and traverse the demand, ...d issue taken on it by the rejoinder, and held well, 2. *Lut.* 1131. 1138.

...sance as bailiff of M. S. and E. S. infants, and M. B. their guardian, that ...place where, &c. was parcel of the manor of C. and copyhold, and that ...was *seised in fee* of the said manor, and that at a certain court, &c. grant...the *locus*, &c. to the said infants, and their said guardian, and that they en...ed, &c. and for damage feasant, &c.; plea, that the father, by his will, ...e according to the statute, granted to the said J. and his heirs the place ...s, &c. and that he died seised, and descended to the infants, and that J. S. ...guardian, by the will of the said M. demises the moiety, and being so, he

justifies

juſtifies the putting in of his horſes; replication, for that defendant confeſſes grant to J. S. but ſays, that according to the cuſtom, &c. it belongs him to aſſign a guardian to the infant at a certain court by *locum*, &c. mitted and aſſigned the ſaid M. B. to be guardian to the ſaid infants, then admitted the infants as heirs to their brother; demurrer and judgment defendant, *v. Lut* 1138. *ſed vide.*

Cognizance as bailiff of the counteſs of N. for damage feaſant; plea, that Elizabeth was ſeiſed in fee in right of her dutchy of L. and by letters-p under the great ſeal grant to bailiffs, &c. of D. two fairs in a year, that pl at one of the ſaid fairs, bought the ſaid ſheep, and paying the accuſtomed and on this the ſaid ſheep being in his cuſtody in the fair, the defendant took it; demurrer and judgment for plaintiff, 2. *Lut.* 1233.

That *locus in quo*, &c. is freehold of defendant, who avows damage feaſant in bar, that it is plaintiff's freehold and not tenement of defendant, *Ra.* 561. 565. 568. 572. *Co. Ent.* 600. *Wilk.* 281. *Plo.* 269. *Up.* 90. 3. *Br.* 39.

Avowry in lands, parcel of the manor, for cattle in the declaration, and other damage feaſant in freehold; plea in bar, that the manor whereof is plain freehold, and not defendant's, *Ra. Ent.* 565. *Vet. Int.* 94.

Cognizance as bailiff of J. damage feaſant in the freehold; plea in bar, that being ſeiſed, gave plaintiff licence to put in his cattle; and traverſes that *locus quo*, &c. was the freehold of J. 1. *Co.* 63. *Ra. Ent.* 561. 567. *Co. Ent.* 1. *Br.* 22. *Her.* 642. Similar cognizance, *Ra. Ent.* 561. 567. *Co.* 609. 22. *Her.* 642.

Cognizance, that defendant is ſeiſed of the manor, whereof, &c. in fee, and damage feaſant *Ra. Ent.* 560. *Vet. Intr.* 48. *Her.* 591. Similar cognizance bailiff, *Aſh.* 389. That defendant is ſeiſed, and took the lands, damage *Ra. Ent* 559.

Plea, that defendant took the boat and nets in a water, parcel of the manor of plaintiff is ſeiſed in fee, damage feaſant; replication, *de injuria propria* traverſes that the water is parcel of the manor, 3. *Br.* 307.

That defendant took the hares courſing in the lands; plea in bar, that it belongs to plaintiff to courſe, by reaſon of his lands there. 2. *Inſt.* 655.

Replevin againſt A. and B. who avow in ten acres of land annually allotted for mowing, between the tenants and occupiers of the whole meadow, by ten whereof A. has one acre, and B. another acre not ſevered, who took the damage feaſant; plea in bar; tender of amends, 3. *Br.* 308.

Avowry by *vicar*, for land, parcel of *glebe*, *Hob.* 16.

That defendant is lord of the moiety of the vill, whereof, &c. and that the did not intercommon, and that he took the cattle, damage feaſant; plea in that plaintiff is lord of the moiety of the vill, and that *locus* is ſeveral to plaintiff every year from feaſt-day to feaſt-day by preſcription; repl. that plaintiff and defendant hold *locus*, being waſte of the vill in the co. T. 3. E. 3. 37.

Avowry, as lord of three parts of the manor in ſeveralty in his own right, as bailiff of the fourth part in *ſeveralty* in paſture, being ſeveral from day to feaſt-day, and held in undivided parts, *Reg Jud.* 35.

Avowry by one, and cognizance by another, as bailiff, damage feaſant in free *Co. Ent* 601. *Plo.* 145. *Aſh.* 401.

Avowry, B. ſeiſed of lands that deſcended to three daughters who took h and were ſeiſed; plea in bar, that J. ſeiſed of lands that deſcended to D. took *huſband* M. and demiſed to plaintiff, *Ra. Ent.* 567.

That E. was ſeiſed of lands that deſcended to defendant, who took cattle, damage feaſant; plea in bar, that E. took J. to huſband, and levied a fine. J. died to L. who demiſed to plaintiff; replication, that fine was levied to the

his heirs; and traverſes that it was levied to the uſes alledged, *Co. Ent.*

wry, damage feaſant in freehold; plea, that J. ſeiſed, deviſed lands to wife for life, remainder to E. in tail, and if ſhe ſhould die without iſſue, then lands to be ſold by executors; wife died, executors ſold to plaintiff, and traverſes freehold; demurrer, *Co. Ent* 602.

E. ſeiſed of ten acres, deviſed to H. in fee, and C. being ſeiſed, enfeoffed him of twelve acres. H. died in life of E. who afterwards *declared* that S. ſon of H. would be heir of E. and would have lands deviſed to his father, and died, S. entered as heir; demurrer, *Ra. Ent.* 562. *Plo.* 340.

M. being ſeiſed, deviſed to defendant in tail; plea, that the ſaid M. died ſeiſed, and lands deſcended to A. who enfeoffed R. who gave licence to plaintiff to put in his cattle; and traverſes deviſe to defendant, 3. *Br.* 379.

wry, damage feaſant in freehold; plea in bar, that W. being ſeiſed of lands that deſcended to S. who demiſed to plaintiff for life. Defendant entered by diſſeiſin, and plaintiff re-entered. Replication, maintains freehold; and traverſe diſſeiſin, *Br.* 201. Similar avowry, plea, that W. ſeiſed, demiſed to plaintiff at will, defendant diſſeiſed W. and expelled plaintiff, who, under pretence of demiſe, put in his cattle. Replication, maintains freehold, and traverſe diſſeiſin, *Ra. Ent.* 568. *Reg.* 99.

owry, freehold; plea, that J. and wife ſeiſed, demiſed by indenture to M. and S. for lives. M. died, S. demiſed his moiety to plaintiff for years, if they ſhould ſo long live. Replication, that demiſe was made with a defeaſance, to be void on payment of eleven pounds, which were tendered at the day, and no perſon ready to receive, and ſo void; rejoinder, that S. did not ſeal and deliver defeaſance; and iſſue, 3. *Br.* 345.

owry, freehold; plea, that H. ſeiſed, demiſed to plaintiff in reverſion after the death of A. and B. tenants for lives, who died; replication, maintains avowry; and traverſe demiſe, *Ab.* 391.

owry by J. and B. his *wife* in freehold of *wife*; plea in bar, that S. being ſeiſed of lands that deſcended to H. who demiſed to plaintiff at will. R. diſſeiſed H. and expelled plaintiff, to which diſſeiſin J. conſented; replication, that M. ſeiſed, demiſed to R. for life; rejoinder, mentioning the bar, and traverſing the demiſe to K. *Ra. Ent.* 568.

owry, damage feaſant in freehold; plea, that W. being ſeiſed, demiſed to J. for life, and afterwards agreed to convey lands to his own uſe for life, with power of leaſing for three lives or twenty-one years, and afterwards to the uſe of defendant in tail. W. levied a fine to the uſe in the indenture, and demiſed to plaintiff for years, if two ſhould ſo long live, J. died, and plaintiff entered; replication, confeſſes demiſe to J. and covenant by indenture; the fine levied to ſuch uſes, and demiſe to plaintiff; and ſays, that J. and W. died, and defendant entered, as of his remainder, demurrer, *Co. Ent.* 000.

at W. ſeiſed, agreed to aſſure lands to uſes, and levied a fine to the uſes in the indenture, viz. to his own uſe for life, remainder to H.; remainder deſcends to L. who, after the death of W. entered, and levied a fine to defendant; plea, that in the indenture it was provided to make it void, on tender of a gold ring, and that W. was attainted by act of parliament, and ring offered on the part of the king to make void the indenture. King granted to plaintiff for life; replication, that there was a *ſaving* in the act, and that L. after the death of M. by petition of right, had livery of the lands by the king, and levied a fine to defendant; demurrer, *Her.* 607.

owry to part of cattle, that J. being ſeiſed, made a feoffment to uſes before the ſtatute, and uſe deſcended to defendant, who, by *conſent* of feoffers, took the profits, and took the cattle, damage feaſant; demurrer and judgment for plaintiff, *Ra. Ent.* 554.

Cognizance as bailiff of E. damage feaſant in the freehold; bar, that lands in ſocage deſcended to E. within age, and plaintiff entered as guardian in ſo replication, maintaining cognizance, and traverſes tenure in ſocage, 1. *Br.*

Avowry, that queen Elizabeth ſeiſed of the manor whereof, &c. granted copy lands to R. and M. his wife, and the heirs of his wife, who ſurrender defendant's uſe; plea, that W. firſt ſeiſed of the manor, granted lands from whom they deſcended to P. who ſurrendered to A. who ſurrende M. for life, who demiſed to plaintiff; replication, that M. before the to J. granted lands to B. from whom they deſcended to M. who ſurren to defendant; traverſes the grant to J.; and iſſue, *Co. Ent.* 575.

That the king being ſeiſed of manor, granted *copyhold* lands to J. wife of in fee, from whom (the wife) they deſcended to defendant; plea, that H. J. at a certain court (ſhe being examined alone by the ſteward) ſurren to uſe of plaintiff, who was admitted; replication, that H. ſurrendered J. afterwards died, and lands deſcended to defendant; and traverſe that J. apart examined by ſteward, 3. *Br.* 370.

That D. ſeiſed of the manor, granted copyhold lands to defendant for life; that S. being before ſeiſed of the manor, granted lands to J. now deceaſed, plaintiff, for their lives; replication, co-aſſignees grant by S. &c. but pl that S. demiſed the manor for years to M. and reverſion to D. and that plain and J. ſurrendered to uſe of J. and his wife, were admitted and died, and after the term ended, granted to lands to defendant for life; rejoinder, maintaining avowry, and traverſes ſurrender. *Her.* 653.

That J. ſeiſed of the manor whereof cuſtomary copyhold lands deſcended youngeſt ſon by cuſtom, granted lands to huſband and wife, and heirs of huſband, wife ſurvived, and reverſion deſcended to the brother, and from him the youngeſt ſon, &c. *Her.* 679.

That T. ſeiſed in fee, took defendant to huſband, who is *tenant by the curteſy*; plea, that T. was not ſeiſed of ſuch an eſtate, that defendant could be tenant by the curteſy; repleader awarded, and plaintiff pleads that the lands are *copyhold*, and were demiſed firſt to F. from whom they deſcended to F. and K. daughter R. took to huſband plaintiff, and ſurvived F. who died without iſſue, and his moiety deſcended to K. and traverſe that J. was ſeiſed in fee, *Her.* 681.

II. Avowries and Cognizances, UNDER DEMISES, Damage Feaſant, and Pleas in Bar, &c. to.

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21. AVOWRY, that *locus in quo* is parcel of the manor of L. and that defendant is *tenant for years*, and took the
22. mare as a diſtreſs, damage feaſant therein; replication, *de injuria*, &c. traverſing *locus in quo* to be parcel, &c.

22. AVOWRY and cognizance by *two* perſons, one in his own right, and the other as his bailiff, and bailiff to a third perſon, who, together with the former, were *tenants from year to year at will* of both parties to a *tenant for life*, and that they took, &c. damage feaſant;
23. 2d, that A. B. ſeiſed in fee of a meſſuage *and lands*, and entitled to a very *particular right of common* for *particular* cattle, from a certain time to ſuch a time in

a year

a year, and *demiſed* ſame to avowant and his co tenant; and becauſe the cattle were treſpaſſing at the ſaid time when, &c. being a time within, &c. they juſtify taking them, damage feaſant; 3d, preſcribes in reſpect of a *meſuage*, inſtead of meſſuage and lands.

DECLARATION for taking a gelding and a mare in B, R. AVOWRY, damage feaſant, ſtating defendant to be *poſſeſſ'd* generally, without ſtating a title.

AVOWRY, that lord T. ſeiſed of *locus*, and *demiſed* ſame to R. P. as *tenant from year to year*, that R. P demiſed to defendant for one year, and becauſe the mare was damage feaſant, &c.; PLEA in bar, admits lord T.'s ſeiſin, and the demiſe to R. P. and the demiſe to defendant; but proteſting that defendant, at the time when, &c. was not poſſeſſed, but ſays, that defendant demiſed to plaintiff to hold, &c. who entered, and at the time when, &c. was poſſeſſed thereof, and put in his cattle, until defendant, *de injuria*, &c.; REPLICATION, admits the demiſe to defendant, but ſays, it was made in conſideration of a ſum of money paid by plaintiff to defendant, and under a proviſo, that if the cattle of one A. B. were turned into *locus*, &c. the demiſe ſhould be void, and upon defendant repairing, on conſideration he might enter, the cattle of A. B. were turned into *locus*, and defendant tendered the conſideration money, and re-entered, and becauſe cattle were damage feaſant, &c.

PLEA in bar to avowry, that *locus* adjoins a cloſe, and is divided therefrom by a hedge or fence, in which there is a fence and gateway leading from *locus* into the ſaid cloſe; that tenants ought to repair the ſaid gate and gateway, and keep the gate ſhut; that plaintiff being poſſeſſed of the ſaid cloſe, put his cattle thereon, and becauſe the gate was open, the cattle eſcaped; 2d, becauſe defendant wrongfully ſet open his gate; REPLICATION, admits the ſituation of *locus*, and ſays, the cattle were wrongfully there; traverſes that tenants are bound to repair; to 2d, the like traverſing, opening the gate.

AVOWRY and cognizance (for taking ſheep in a place called A. B.) that the *locus* is paſture, and known by the name of A. B. and is divided into a number of cattle-gates, which are *demiſeable* by the lord of the manor; that the lord demiſed five of the gates to one of the defendants, and becauſe, &c.; PLEA in bar, admits that *locus* is parcel of the manor, but ſays, that one C. D. was poſſeſſed of the manor of H. and alſo of a houſe and premiſes contiguous to a common belonging to the manor of H. only ſeparated therefrom by a ſmall rivulet, which is not ſufficient to prevent cattle from eſcaping from the common into *locus*;

that

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	that C. D. demiſed the ſame to plaintiff, whereby he became entitled to common of paſture, and that plaintiff and his father put their ſheep therein; and becauſe *locus* was not ſeparated by a proper hedge from the	
35.	cloſe, the cattle eſcaped and ſtrayed; Replication, that the ſheep were in *loco of plaintiff's own* wrong, and traverſes plaintiff's right of common.	
36.	Avowry, for taking cattle; 1ſt, *non cepit*; 2d, that *locus*, &c. was the property of one A. B. for a long term of years, and that he demiſed the ſame to defendant; and becauſe the cattle were doing damage there, he	
36.	ſeized them; plea in bar, allotment under an incloſing act, of a cloſe contiguous to plaintiff's cloſe allotted under the ſame act, and *through defect of defendant's fences*, cattle eſcaped into cloſe of defendant, who was *awarded* under the act to make ſame, and keep them in repair.	
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3.	Cognizance as bailiff, diſtraining for rent under a demiſe.	
15.	Avowry, for rent arrear under a demiſe, part for three	
16.	quarter's rent, payable quarterly; 2d, half a year's rent payable half-yearly. Plea in bar, 1ſt, *de in-*	
17.	*juria*, &c. traverſing demiſe. 2d plea in bar to firſt avowry, nothing in arrear, and concluſion to the country. 3d plea to 2d avowry, *de injuria*, &c. traverſes demiſe. 4th plea in bar to laſt avowry, no rent in arrear, and concluſion to the country. Replication to 1ſt plea, to 1ſt avowry, iſſue on the tra-	
18.	verſe. 2d replication to 1ſt plea to 2d avowry ſimilar; demurrer to 1ſt replication, with cauſes, not taking iſſue on the words of the traverſe, inſufficient in other reſpects; demurrer to 2d replication, that it concludes to the country, whereas it ſhould have concluded with a verification; joinder to 1ſt demurrer; 2d joinder in demurrer to 2d demurrer (all proceedings in replevin ſet out from the plaint to final judgment.)	
25.	Avowry, for rent under demiſe (proceedings ſet out.)	
	Avowry, as leſſee for years, for damage feaſant; plea in bar, right of common in *locus in quo*; replication, *de injuria*, traverſing plaintiff's right of common; re-	
	joinder, taking iſſue on the traverſe, - -	2. R. Pr. C. P. 339
	Avowry, by the leſſee of the tenant for years to tenant by *elegit*, for damage feaſant, - - -	*Ibid.* 374
	Plea in abatement to the declaration in replevin, that the defendants took the cattle in another place than mentioned in the declaration, and for a return cognizance as bailiffs to J. H. the leſſee from year to year of C. C. the tenant in fee of the *locus in quo* for damage feaſant; plea in bar, taking iſſue on the traverſe of the place, -	*Ibid.* 376

Avowry, that G. had herbage and paſture in *locus in quo*, &c. every year when ſown with grain, immediately after grain was carried off until it was reſown, and every year when it lay fallow for the whole year, and *demiſed* to defendant for ninety years, if he ſhould ſo long live; demurrer, *Wi. Ent.* 888.

That F.* being ſeiſed, made a feoffment to uſes, and J. tenant for life, demiſed lands to defendant, who being poſſeſſed of cattle, put them into lands to depaſture; and traverſes that cattle were plaintiff's cattle, and iſſue. *Her.* 629.

Avowry, that E. being ſeiſed of *locus in quo*, &c. *demiſed* to defendant for a year, and ſo from year to year, and avows damage feaſant; plea in bar, prior demiſe made to plaintiff, and traverſes demiſe made to defendant; demurrer, 2. *Vent.* 211.

Avowry, by leſſee of biſhop for damage feaſant, and averment that biſhop is alive; plea in bar, that *locus* is parcel of a manor, and demiſeable by copy, and entitles himſelf by copy granted by the predeceſſor of the biſhop; defendant maintains avowry, and traverſes the preſcription, *Vi. Gen.* 575.

Avowry, that R. being ſeiſed of meſſuages and lands, whereof, &c. *demiſed to* defendant for years, who avows damage feaſant; plea, being ſeiſed of the manor whereof houſes and lands were held and demiſeable by copy granted to B. in fee, who gave plaintiff licence to put in his cattle; demurrer, *Wi. Ent.* 866.

Avowry, A. ſeiſed of ſeveral parcels of lands, *demiſed* to W. for one hundred and ſixty years, that by ſeveral aſſignments came to R. who demiſed to defendant for twenty-one years, who took cattle damage feaſant in M. and traverſe that he took *in loco* in the Count; bar, common of paſture in M. *Ro. Ent.* 405.

Avowry by *aſſignee* of *executrix* of leſſee for years, damage feaſant; plea, that leſſee died inteſtate, and derives title from *adminiſtrator*; *abſque hoc*, that he was made executrix, and iſſue, *Pl. Gen.* 584.

Avowry, by aſſignee of a term for cattle, damage feaſant; plea, prior aſſignment made to plaintiff; replication, maintaining the avowry, and traverſe aſſignment to plaintiff, 1. *Bro.* 310. *Wi. Ent.* 922.

Plea in bar, that W. being ſeiſed, enfeoffed R. who demiſed, and traverſe that W. died ſeiſed, *Tho.* 270.

Plea in bar to avowry by leaſe, on condition that leſſee ſhall not aſſign, and leſſee breaks the condition, &c. *Pl. Gen.* 533. &c. To avowry, by leaſe made by a chapter taken before the ſtatute 1. E. 6. *Pl. Gen.* 551.

That biſhop, being ſeiſed of the manor, *demiſed* to defendant for years, *Ra. Ent.* 559. *Vet. Int.* 55.

That T. being ſeiſed, demiſed from year to year at will, and defendant at will ſowed the lands in which he took cattle, damage feaſant, *Ra. Ent.* 561. *Up.* 111.

That T. being ſeiſed, demiſed to R. and J. for lives, remainder in tail deſcended to two women coheireſſes, who make *partition* thereof, and of other lands *huſband* and wife demiſed to defendant for years, *Ra. Ent.* 563. *Plo.* 426.

That M. ſeiſed of meſſuages and lands, whereof, &c. demiſed to defendant for years, *Ra. Ent.* 566. That R. being ſeiſed, demiſed to defendant for a year, and ſo from year to year, 3. *Br.* 321.

That plaintiff, ſeiſed of lands, demiſed to defendant for years, if three ſhould ſo long live; plea in bar, that *demiſe* was made by indenture, on condition of re-entering for rent unpaid, without diſtreſs found, and re-entered for rent in default of diſtreſs; replication, there was ſufficient diſtreſs, viz. certain goods; rejoinder, proteſting that ſuch goods were not upon premiſes; for plea, that lands were not *open* (*aperte*) to diſtrain, 3. *Br.* 341.

That E. being ſeiſed, demiſed to defendant for years, ſo long as three ſhould live, 3. *Br.* 348.

Plea, *profert* in part, and to reſidue, avowry damage feaſant in lands demiſed for years, if he and two others ſhould ſo long live, *Her.* 4.

That

That A. ſeiſed, demiſed for years; plea, that A. demiſed to plaintiff's wife for life, and traverſes demiſe to defendant, *Aſh.* 394.

Avowry, damage feaſant; plea, that W. ſeiſed, demiſed by indenture to J. for ten years, rendering ten pounds, and at the end of the term a quantity of tiles or bricks, as a fine on a freſh demiſe by others for ten years, and ſo for ever from ten years to ten years for a ſimilar fine, and ſeveral terms of ten years expired, and J. paid the tiles, &c. W. deviſed lands to F. in fee, and J. deviſed the term to R. who aſſigned to plaintiff. *Ra. Ent.* 562. *Plo.* 268. Similar avowry, plea, that M. ſeiſed in tail, levied a fine with tender to S. for years. S. made J. executor, who made B. executor, who demiſed to plaintiff for years; demurrer, *Ra. Ent.* 564. *Plo.* 428. Similar avowry; plea, that abbot ſeiſed, demiſed to three for their lives, and afterwards demiſed for years in reverſion to J. H. 8. ſeized by ſtatute diſſolutions granted lands to L. and J. aſſigned the term to plaintiff; demurrer, *Ra. Ent.* 572. *Plo.* 146. *Aſh.* 403.

Avowry, by aſſignee of a term, for a piece of cloth, damage feaſant, *Vet. Int.* 241.

That king ſeiſed of a park, granted the keeping and herbage thereof to J. and E. for lives, and afterwards granted the reverſion to H. and M. his wife in tail that deſcended to defendant; plea, confeſſes the ſeveral grants, and pleads ſurrender of the office to H. and N. who demiſed to T. for years for a fine, and king granted to him the reverſion in fee. H. and N. died, eſtate tail deſcends to E. who levies a fine to W. and others in fee, who with T. demiſed to plaintiff for years; demurrer, *Co. Ent.* 577.

Avowry, that J. ſeiſed, demiſed to F. for years, who deviſed to E. his wife for life, remainder to M. his daughter in tail. M. took D. to *huſband*, who granted to plaintiff, who acknowledged ſtatute ſtaple to defendant, whereof there was an extent and liberate; plea, uſurious contract between plaintiff and D.; *nil dicit* thereto, *Her.* 621.

Cognizance as bailiff of leſſee for years of a moiety, and of one ſeiſed in fee of the other moiety, *Her.* 641.

For Avowry under Demiſes (*See* Rent on Demiſes, *poſt.* cxciv. ccv.)

III. Avowries and Cognizances (and Pleas in Bar, &c. to). By Commoners.

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44. Declaration in replevin for taking a mare; avowry and cognizance taking cattle, damage feaſant in *loco*, &c. parcel of a common in the manor of A. over which avowant claims a *common of paſture* in right of a copyhold meſſuage and land granted by the lord to the avowant, and two others, for their lives, and the life of the ſurvivor, for all commonable cattle levant and
46. couchant on ſaid meſſuage and land; plea in bar, *de injuria, &c.* and traverſe of common of paſture; 2d, leave and licence from the bailiff; 3d, *de injuria*, and traverſes the grant from the lord; 4th, leave and licence of one W. A. who claims an unlimited common of paſture in *loco*, in right of a copyhold tenement demiſed to him by the lord.

48. Declaration in replevin for taking ſheep; avowry and cognizance *locus* a waſte within the manor of H. a

meſſuage and land, part of the manor demiſeable, a grant of the meſſuage and land from the lord of the manor to E B who entered, and is ſeiſed E B demiſed by indenture, and with the conſent of the lord, to one of the defendants for twenty one years, reſerving cuſtom for every tenant of the ſaid meſſuage and land upon paying a heath rent of ſixpence, to have *common of paſture* over *locus* for twenty ſheep or two horſe, or two cows, and paying heath rent of threepence for ten ſheep, one horſe, or one cow, that defendant paid a rent of ſixpence and becauſe plaintiff's ſheep were damage feaſant there, *per quod*, he could not enjoy, &c; 2d avowry, cuſtom within the manor for the homage of the court leet upon to make bye laws for regulating the common, as ſtated in firſt avowry, and becauſe, &c, plea in bar, admit *locus*, &c. but ſays, that one W R. ſeiſed of forty ſix acres of land in the ſame pariſh near to *locus*, &c preſcription for common of paſture over *locus* for ſheep, a demiſe from W. R. to plaintiff, by which plaintiff put in his ſheep until defendant *de injuria ſua*, &c, replication ſupporting avowry, and traverſe of plaintiff's right of common.

2. Plea in bar to avowry, damage feaſant, that *locus* lies contiguous to a common, that tenants of the *locus* ought to repair the fence between the *locus* and common; that lord D. was ſeiſed of a meſſuage preſcription for common of paſture over *locus*, for all cattle at all times of the year, demiſe of the meſſuage, &c. to plaintiff, that plaintiff put his cattle on the common, and becauſe the fence was out of repair, cattle eſcaped, &c; 2d, that *locus* adjoins a cloſe called G M., that tenants of *locus* ought to repair, &c; lord D ſeiſed of the cloſe, gave *leave* to plaintiff to put in his cattle, and becauſe, &c, repairation, that the fence, before the time when, &c was in good repair, and that plaintiff, a little before the ſaid time when, &c. pulled it down.

6. Plea in bar, that *locus* was contiguous to a common, and which was ſeparated from the common by a fence and a ditch; that tenants of the *locus* have been uſed immemorially to keep up a fence of a proper height, and to ſcour the ditch, that plaintiff was ſeiſed of a meſſuage and land, in right whereof he preſcribes for *common of paſture* on the common for all commonable cattle levant and couchant, and being ſo ſeiſed, plaintiff put the mare and gelding on the common to depaſture, and becauſe the fence was not of a proper height, and alſo becauſe the ditch was filled up, the cattle ſtrayed out of the common into the *locus*; replication, proteſting that plaintiff is not ſeiſed of the ſaid meſſuage and land, for replication that the cattle

were

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were wrongfully in the *locus*; traverſing right of common; rejoinder, iſſue on the traverſe.

59. Declaration for taking ſheep, &c.; avowry by the maſter, fellows, and ſcholars of Trinity College, ſeiſed of different manors and a court-leet; ſets out a very particular cuſtom of *common of paſture*, acccording to
59. the courſe of tillage, and cuſtom for the jury to appoint field reeves, and to make bye laws reſpecting
62. ſuch common impoſing penalties on the breach; pleas in bar.

62. Avowry and cognizance (for taking cattle) that a certain meſſuage is parcel of a manor demiſeable by the lord, and that the *locus* is parcel of the manor wherein there is a cuſtom, that every tenant of a cuſtomary tenement ſhall have *common of paſture* when the *locus* ſhall have been ſown with corn, until it ſhall have been reſown, and alſo a cuſtom within the manor, that the huſband of every wife being a tenant, ſhould be poſſeſſed of the tenement after her death for the term of his natural life; that the ſteward of the manor granted the houſe to the wife, and that ſhe died; whereupon one of the defendants became ſeiſed thereof as her huſband, and by virtue thereof was entitled to common of paſture, while *locus* was not reſown with corn, and becauſe the cattle were there eating the graſs, he well avows, &c. damage feaſant.

64. Avowry, tenants of the manor have *common* in *locus*, and particular cuſtom as to the uſage of it, and diſ-
65. treſs for breach of the cuſtom; plea, proteſting that there is no ſuch cuſtom, that the cloſe is within his own manor.

66,67. Avowry, for taking a gelding, damage feaſant; plea in bar, preſcribes for common of paſture, defendant
68. traverſes the cuſtom, and plaintiff takes iſſue on the traverſe.

68,69. Avowry, by a copyhold and cuſtomary tenement; plea, that plaintiff was cuſtomary tenant of the ſaid manor when defendant, *de injuria*, &c.; 2d plea, a right of
71. way in reſpect of a cuſtomary tenement; replication to the firſt plea, traverſes plaintiff's right in reſpect of his cuſtomary tenement; to 2d, that cattle were out of the way.

72. Cognizance, damage feaſant upon the will of M. A.;
73. plea, a *right of common* in reſpect of the freehold;
74,75. 2d, a right of common *pur cauſe de vicinage*; replication, maintaining cognizance, traverſing the right; demurrer thereto.

76. Avowry, by a cuſtomary tenant, damage feaſant on the
77. common; plea, that the preceding lord had enfeoffed A. S. of a piece of ground, and granted him common of paſture, with an averment of ſufficiency of com-
80. mon; replication, traverſes ſufficiency of common.

Cog-

	PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.
Cognizance, for taking a mare, damage feasant, plea in bar, common of pasture belonging to a customary tenement which was demised to plaintiff by J S., replication, traversing the custom	
Avowry, and cognizance for damage feasant in plaintiff's freehold, to declaration for seizing plaintiff's cattle, plea in bar, acknowledging the freehold to be in defendant, as alledged in the avowry, but shews a seisin in fee in R W in two acres of arable land in the field which, &c with a right of common of pasture in all said field, except two acres, when said field laid fallow for the whole year till resown with corn and in every year when so sown from time of reaping till resown for a certain number of cattle, and that R W demised same to plaintiff for one hundred years, by virtue wher of he entered, and that at said time when &c said field was fallow, whereupon he put seven ewes and seven lambs into said two acres, till defendant took them, replication confesses seisin and right of common, and demise by R. W. to plaintiff, but says, that plaintiff put seventeen ewes and seventeen lambs, and traverses his only putting in seven, rejoinder, says as before, that he only put in seven, and issue, -	Lill Ent 359
Replevin, for taking cattle, defendants make cognizance as bailiffs of lord D and justify taking damage feasant, plea in bar, that T. C and all those whose estate he had, ought of right for tenants and occupiers of premises, to have common of pasture for commonable cattle, -	3. T. R. 147
Replevin, avowry that J B. was seised in fee, and devised to wife for life, remainder to son J B charging them with an annuity to J I with power of distress, - -	
Replevin, for taking gelding, acknowledge the taking damage feasant in *loco quo* &c common, plea in bar, prescribing in a *que estate* for all commonable cattle levant and couchant, except when the *locus in quo* was sown with corn, 2d and 3d plea, prescription like the first, 4th &c, that the *locus in quo* were fields dispersed and adjoining and that the cattle intercommoned, unless at certain times of the year before the corn was carried off, and that cattle had been accustomed to stray after that time, which was called shack, replication to all the pleas, an agreement entered into by the respective tenants, who all had right of common, not to exercise their right of common for their mutual convenience, and entered into covenants for that purpose; setting forth, that from the time of carrying off the corn, &c it had been a practice by general consent to sow with turnips, and to inclose, setting forth other special circumstances, and that the cattle of plaintiff were turned loose, and going at large on defendant's field, contrary to such agreement, - -	2. H. Bl. Rep. 4 to 9
Plea in bar to cognizance as bailiffs to the king in replevin, for seizing plaintiff's hogs in the New Forest, Hants, that the king granted to the earl of S. a right of common and	

PRECEDENTS IN BOOKS of PRACTICE REPORTERS, &c.

pannage for hogs at all times of the year, and a title at the time of paſſing an act for incloſing two thouſand acres, one thouſand at the time of paſſing the act, and one thouſand at another time; ſets forth, that incloſures were made of one thouſand acres only, and ſets out a demiſe from D. of M. of part not incloſed; replication, a clauſe in the act, that commoners ſhould enjoy common for hogs only between the fourteenth of September and the eleventh of November, on forfeiture of any hog, and right of common is continued, except within time of winter hedging; rejoinder, ſetting out the day, and that at the end of the firſt ſeſſion of parliament held remaining, one thouſand were not nor are yet admeaſured; demurrer, - - 2. Burr. 1113

Cognizance, as bailiff, damage feaſant; plea in bar, that plaintiff, ſeiſed of houſe, had *common* for all milch cows throughout the year; replication, mentioning cognizance, and traverſes preſcription, *Aſht.* 389.

Plea in bar (to ſimilar cognizance) that plaintiff, ſeiſed, &c. had *common* of acorns for all pigs rung in acorn time; replication, ſimilar, *Her.* 642.

Cognizance, for cattle taken, damage feaſant for depaſturing the graſs, and maſting the trees; plea, &c. preſcribes for *common* of paſture, *Her.* 641.

That R. ſeiſed of the manor incloſed, and approved parcel of the land waſte thereof, and left ſufficient *common* and way for tenants of the manor in the reſidue; plea, &c. that plaintiff had common of paſture, and traverſes that R. left ſufficient *common* and way in the reſidue, *Her.* 645.

Avowry, by leſſee of a manor; plea, &c. that the inhabitants of the vill had common in two hundred acres of paſture, whereof, &c. for all cattle levant, &c. from feſtival to feſtival; replication, maintaining the avowry, and traverſes the cuſtom of the common, *Ra. Ent.* 559. *Vet. Int.* 45. 55.

Plea in bar, that plaintiff hath common in a field called M. adjoining ſaid two acres for all beaſts, and that defendant and all the copyholders were uſed to incloſe ſaid two acres from the field, in defect whereof plaintiff's beaſts entered into the ſaid two acres out of the field, 1. *Bro.* 309.

Avowry, damage feaſant in the freehold; plea in bar, that W. ſeiſed of three acres of land called, &c. demiſed to plaintiff at will, and defendant, and all thoſe whoſe eſtate, &c. were accuſtomed to incloſe one acre of meadow adjoining, &c. with hedges, &c. and for defect of the incloſure the beaſts entered; replication, that a brook forms a fence between plaintiff's and defendant's lands, and traverſes the cuſtom, 1. *Bro.* 309.

Similar plea for part of the fences at the eaſt end of the cloſe, through defect of fences to incloſe, the cattle entered; replication, confeſſes the cuſtom, but that hedges were in ſufficient repair, but that the cattle were untractable, and broke the hedges, and traverſes the entry through defect of fences, 1. *Bro.* 310. Similar replication, traverſing that the hedges were broken, *Ibid.*

Similar replication, that among plaintiff's cattle there was an untractable cow, which he tied with a rope to prevent her breaking down the hedges which defendant, together with J. untied, and that the hedges being out of repair, the cow entered with the other cattle, *Ibid.*

Cognizance, damage feaſant in the freehold; plea in bar, that the dean and chapter, ſeiſed of the manor whereof, &c. granted plaintiff cuſtomary tenements, according to the cuſtom of the manor, and that within the manor there is a cuſtom, that every cuſtomary tenant hath common in *locus*, &c. for nine beaſts,

on the tenements levant throughout the year; replication, confeſſes part of the plea in bar, but that one N. being a cuſtomary tenant of the manor, cut an aſh-tree growing on the cuſtomary cloſe, contrary to the cuſtom, and without the licence of the lord, and plaintiff, with others, being then ſworn of the homage to make inquiſition, and to return a verdict, contemptuouſly refuſed, by which plaintiff *forfeited* his eſtate; rejoinder, proteſting, &c. for plea, that within the manor there was a cuſtom for every cuſtomary tenant to cut trees for fuel and fences, and traverſe that N. cut an aſh contrary to the cuſtom; demurrer, *Wi. Ent.* 818. *Wi. Rep.* 62.; judgment for plaintiff on defects appearing in the plea, &c.

Avowry, damage feaſant in defendant's *common*, being a copyholder; plea in bar, proteſting, &c. for plea, that R. ſeiſed of the manor whereof meſſuages and lands, called P. were parcel and cuſtomary, held by his cuſtomary tenants of P. common of paſture in *locus*, &c. for all ſheep and lambs on thoſe tenements levant throughput the year, that tenements were granted, and he put in his ſheep; replication, proteſting no ſuch preſcription, for plea, *de injuria*, &c. put in the cattle, and traverſes that the beaſts, at the time of the taking, were levant on the tenements called P.; demurrer, *Wi. Ent.* 857. Judgment for defendant; traverſe held good.

Cognizance as bailiff, damage feaſant in the freehold; plea in bar, plaintiff confeſſes *locus*, &c. to be defendant's freehold, but pleads that R. ſeiſed of houſes and lands, had common for himſelf and his tenants in the field whereof *locus* was parcel for twenty ſheep, when corn ſhall have been carried off, until the feſtival, who demiſed to plaintiff; replication, that *locus* was not parcel, &c.; iſſue, *Tho.* 266.

Cognizance, ſimilar; plea in bar, that M. ſeiſed of the manor, granted meſſuage and land to defendant and four others for their lives, and within the manor there was a cuſtom that every cuſtomary tenant have *common* of paſture in the ſaid one thouſand acres, for all cattle levant on the tenements for the whole of the year, and plaintiff put in his cattle; Replication, maintains freehold, and *de injuria*, &c. and traverſes that the cattle were levant on the tenements, and iſſue, *Wi. Ent.* 955. Special verdict.

Avowry, damage feaſant in the freehold; plea in bar, that plaintiff ſeiſed of meſſuages and lands, had common of paſture in *locus* for all his ſheep on the tenements levant for the whole year; replication, proteſting that he was not ſeiſed, &c. for plea, that it was agreed between defendant, and plaintiff, and others, that plaintiff and others, freeholders in S. ſhould have *common* in H. and L. without interruption of defendant, and plaintiff in conſideration thereof *demiſed* to defendant common of paſture which they had in *locus*, &c.; demurrer, *Wi. Ent.* 920.

Avowry ſimilar; plea in bar, that plaintiff, ſeiſed of meſſuages and lands, had common of paſture in *locus*, &c. for one hundred ſheep on tenements levant for the whole year; replication, maintaining avowry, and traverſes preſcription, and iſſue, *Br. R.* 429. Similar, for all cattle, *Tho.* 271.

Plea in bar by freehold, and right of common traverſed, and iſſue, *Clif.* 636.

Cognizance, damage feaſant; plea in bar, ſpecial preſcription for common in an arable field for a certain time; replication, that the *locus*, &c. is his freehold, traverſes preſcription, and iſſue on that, *venire facias* awarded, returnable on the octave of the Purification, at which day plaintiff pleads *releaſe of one of the defendants ſince the laſt continuance*; demurrer as to a plea pleaded at the aſſizes; and joinder, 2. *Lut.* 1141.

Avowry, that A. B. ſeiſed in fee of one of the meſſuages, &c. had common by preſcription for *locus*, &c. and demiſes the meſſuages, &c. to defendant, &c. and for that he ſhows damage feaſant; plea in bar, that his leſſor had alſo common by preſcription for a certain time of the year; replication, that plaintiff ſurcharged the common, and iſſue, 2. *Lut.* 1238.

Avowry and cognizance, damage feasant; plea in bar, by several *common appurtenant* for a certain number by prescription, and traverse, maintains, &c. *Gen.* 519. 526.

Cognizance, taking the cattle as bailiff, damage feasant, in freehold of J.; plea in bar, that the queen, seised of the manor, had common of pasture in *locus*, &c. for himself and customary tenants, for all commonable cattle throughout the year, that plaintiff was customary tenant, who put in the cattle; replication, maintaining the freehold, and traverse prescription, *Ro. Ent.* 141.

Avowry, taking cattle damage feasant in M. demised, and traverses place in the Count; plea in bar, that plaintiff, seised of lands, had common of pasture in *locus* called M. for all beasts, every year, from a certain day to the feast of, &c. and defendant, to disturb plaintiff in the use of the common, sowed it with barley; replication, maintaining avowry, and traverses the prescription, *Ro. Ent.* 400.

Avowry, similar, without a traverse; plea in bar, that H. and E. seised of houses and five yard lands, had common in *locus*, &c. for all cattle called rother beasts levant, &c. every year from day to day; H. and E. levy a fine of the tenements (*inter alia*) with certain descriptions, &c. (and no mention of the common) to the use of plaintiff and wife for their lives, who put in the beasts; demurrer, *Wi. Ent.* 862.

That defendant, seised of messuages, &c. had common in *locus*, &c. and took the said beasts damage feasant; plea in bar, that H. seised of the messuages and lands, had *common* of pasture by himself and tenants in the said *locus*, &c. for all commonable cattle levant, &c. throughout the year, and demised to plaintiff, who put in his cattle; replication, protesting that H. had no common, for plea that H. demised to plaintiff, and traverses that H. demised to plaintiff, *Wi. Ent.* 938. *Heb.* 72.

Avowry, damage feasant in freehold; plea in bar, that R. seised of the manor of D. by himself and his farmers of the said manor, or of any part thereof, had common in *locus*, &c. for all commonable cattle levant, &c. when the fields called E. and M. should lay fallow for a whole year, and after the grain sown from and after the feast of Pentecost, were used to fasten the horses to posts on the *locus*, &c. until the grain was carried off, and afterwards by all commonable cattle, until the same was resown, and R. demised to plaintiff the messuages and lands, parcel of the manor, who used the common; replication, maintains the avowry, and traverses the prescription; issue and special verdict, *Wi. Ent.* 950. Verdict for plaintiff on the issue, *Heb.* 64.

Avowry, similar; plea in bar, that plaintiff's father, seised of messuages and lands in four *vills*, had common of pasture in *locus*, &c. for all cattle called rother beasts and horses levant on the tenements from feast to feast, and demised to M. for life, who demised parcel of the lands to plaintiff for the life of M. who put in his cattle; replication, maintaining freehold, traverses prescription; issue and special verdict, *Wi. Ent.* 957. *Heb.* 209.

Cognizance, similar; Plea, plaintiff seised of a freehold of the manor of M. by rent and services, and divers other freeholds, and divers other customary tenements, parcel of the said manor, and that several tenants of freeholds had, together with the customary tenants, sole and several, pasture in *locus*, &c. for all beasts, except, &c. upon their respective freeholds levant for the whole year, and in the same manor there was a custom that the several copyholders as well as freeholders had sole and several pasture; demurrer, 1. *San.* 348. 340.

That defendant, seised of houses and lands, had common of pasture in *locus*, &c. for all cattle levant, &c. for two years and half a year in every three years and every third year in *locus*, from the feast of the Annunciation till Michaelmas, and used to lay for pasture, &c.; special demurrer, for that the defendant had not entitled himself to common in his recovery, *Br. R.* 431.

Avowry

wry by one who had right of common, for that he could not enjoy his common in ſo ample manner, &c.; traverſe of the right, *Clif.* 634.
nt on taking ſix ſteers in a place called M.; avowry and cognizance, as to four ſteers, that defendant R. was ſeiſed in fee of thirty-four cattle gates in *locus*, &c. and that plaintiff's beaſts were damage feaſant, for which, &c.; another plea for the other two ſteers, for that one of other of the defendants had eight cattle gates there; ſpecial demurrer to the firſt avowry, and as to the two ſteers pleads that *locus*, &c. is parcel of the manor of M. and which he was ſeiſed in fee, and there was ſufficient *paſture* as well for the beaſts of defendants as of all others, having right, &c.; joinder in demurrer by defendants, as to avowry for the four ſteers, and to the bar to the avowry for the two ſteers; replication, maintains avowry, and beſides ſays, that none except thoſe who have cattle gates, &c. have any right to put in, &c. any cattle in *locus*, &c. and that defendant H. and divers others were ſeiſed or poſſeſſed of the two hundred and ſeventeen cattle gates, thereof, &c. and that it belonged to them to have the ſole and ſeveral paſture, &c. and that the plaintiff was not ſeiſed or poſſeſſed of any cattle gates, by which, &c. and traverſes the ſufficiency of common; demurrer, for that it is a *departure* from the avowry, &c.; judgment, that the avowries were bad, becauſe no title to the cattle gates ſhewn, 2. *Lut.* 1157.
vowry, on a cuſtom, that if any tenant puts in a common his cattle before a certain day the lord may diſtrain and juſtify damage feaſant; bar, proteſting that there is no ſuch cuſtom, for plea, that the *locus*, &c. is within his freehold, and traverſes that it is within the lordſhip; iſſue and verdict for avowant, *Theſ. Br.* 56. 57.
plevin by three, one avows damage feaſant in his freehold; bar, and each juſtify ſeverally by right of *common* by *preſcription*, *Pl. G. n.* 496.
ilar avowry and bar, defendant maintains his freehold and traverſes preſcription alledged by plaintiffs ſeparately, and plaintiffs maintain ſeveral pleas in bar, by uſage of common by preſcription, and iſſue, *Pl. Gen.* 519.
ognizance as bailiff, damage feaſant in his freehold; plea in bar, that plaintiff, ſeiſed of houſes and lands, had common in *locus*, &c. for all *ſheep* every year when the field ſhould be ſown after corn carried off until reſown, and throughout the year when *locus*, or any part, lie fallow, in whole or in part if it lies fallow; replication, maintains cognizance, and traverſes the preſcription; rejoinder and iſſue, 1. *Bro.* 304.
vowry, that he had common for four cattle every year from the middle watch of the feſtival of P. and J. until the firſt morning, and from thence every day and night until the feaſt of St. John the Baptiſt, *Bro. R.* 427.; and avows for damage feaſant, *Clif.* 634.
hat the biſhop of N. ſeiſed of the manor, had *common* of paſture in *locus*, &c. for his cuſtomary tenants of houſes and thirty acres of land, for all his commonable cattle on the tenements levant, throughout the year, which tenements were granted to defendant, who avows damage feaſant, *Wi. Ent.* 857.
t defendant is a cuſtomary tenant within the manor of B. and that within the manor there is a cuſtom that every cuſtomary tenant hath *common* in *locus*, &c. for all commonable cattle levant on the tenements throughout the year, and took the cattle damage feaſant; bar, confeſſes the avowry, but further pleads that the manor of B. extends into the *vills* of B. and T. and that plaintiff was cuſtomary of meſſuages and lands in T. held of the manor of B. and as ſuch hath *common* in *locus*, &c for all commonable cattle levant, &c. throughout the year; replication, maintaining avowry, and traverſes the preſcription, *Wi. Ent.* 912. *Bro. A.* 428.
t defendant, ſeiſed of houſes and lands, had common of paſture in *locus*, &c. for all cattle levant, &c. throughout the year, and that he took cattle damage feaſant; bar, that plaintiff, ſeiſed of houſes and lands, had common of paſture in the lands

lands adjoining to the *locus*, &c. without ſevering the hedges, and in *locus*, &c. *pur cauſe de vicinage*, replication, maintains avowry, and traverſes preſcription. *Bro. R.* 425.

Cognizance as bailiff, damage feaſant; plea in bar, that within the manor there were divers cuſtomary tenements, demiſeable, &c. and a cuſtom that all the cuſtomary tenants of the ſaid tenements had ſole and ſeveral *paſture* in the ſaid *locus*, &c. every year for the whole, as were belonging to the ſaid copyholds, and gave *licence* to plaintiff to put in his beaſts; replication, maintaining cognizance and traverſes cuſtom, and iſſue, 2. *San.* 321. Judgment for plaintiff on verdict, and arreſted for pleading licence without *deed*.

Similar cognizance by bailiff, mayor, &c. of city of C.; plea, that plaintiff was citizen and freeman, that the city was an ancient city within which there was a cuſtom, that every freeman hath common in *locus*, &c. for two geldings and one cow, or for two cows and one gelding, at his election, throughout the year, and plaintiff put two cows; replication, defendant confeſſes the cuſtom, but that plaintiff was not free of the city, and iſſue, *Br. R.* 418.

Simila. cognizance; plea in bar, that plaintiff as farmer of T. H. held houſes and lands granted to T. H. by copy of court roll of manor of K. whereof *locus in quo* was parcel, within which is a cuſtom that every copyholder and his farmer hath *common* of paſture in *locus*, &c. for four beaſts, namely, geldings, horſes, or cattle, and milch rother beaſts, in every year from day to day, *Br. R.* 430.

Plea in bar to avowry for damage feaſant by a commoner, that the common is extinct by purchaſe of part, 1. *Bro.* 312.

Avowry for taking cattle damage feaſant in freehold; plea, &c. that plaintiff, ſeiſed of meſſuages and lands, had *common* in the moor throughout the year, and ſix acres of meadow, &c. after hay carried off; replication, that the moor and meadow are ſeparate, and traverſe the preſcription, *Ra. Ent.* 559. *Upp.* 90. ſimilar avowry; plea in bar, that plaintiff, ſeiſed of houſes and lands, hath *common* in *locus*, &c. for all cattle throughout the year; replication traverſes the preſcription there, *Ra Ent.* 559 *Vet. Int.* 48.

Avowry, damage feaſant in the freehold; plea in bar to avowry, that plaintiff, ſeiſed of the manor, had all the herbage of the land when it lay fallow (*friſca*); replication, maintaining the freehold, and traverſes the preſcription, *Co. Ent.* 609. Plea in bar, that plaintiff, ſeiſed of lands in right of his wife, had *common* for all his cattle from feaſt day to feſtival; replication, *locus*, &c. was *ſeveral* and not common, *Reg. Jud.* 35.

Plea in bar, that plaintiff, ſeiſed of houſes and lands in the county of Lancaſter, had *common* of paſture for all commonable cattle levant, &c. throughout the year, in lands in the county of York, where the taking was; rejoinder, maintaining the freehold, and traverſes preſcription; *venire facias* awarded by conſent to the ſheriff of York, 3. *Br.* 257.

Avowry for cattle taken in a coppice; plea, that the coppice is parcel of a wood called D. containing coppices, of which W. being ſeiſed by preſcription, cut and incloſed for eight years three or four coppices alternately, and reſidue were open for *common*, and that plaintiff, being ſeiſed of houſes and lands, had common in the open coppice for the large cattle levant, &c.; replication, that the ſaid W. by preſcription cut and incloſed three, four, five, or ſix coppices, and traverſes preſcription alledged by plaintiff, 3. *Br.* 276.

Avowry, damage feaſant in the freehold; plea, that plaintiff, ſeiſed of one acre of land called, &c. had common in twelve acres for two years ſucceſſively, after the corn cut, for all his large cattle levant, &c. until the graſs with them ſhould be *ſufficiently depaſtured*, and afterwards with one hundred ſheep until reſown, and that every third year, in which it ſhould lay fallow, throughout the year with one hundred ſheep; replication, maintaining the avowry, and traverſe the preſcription, 3. *Br.* 298. Similar avowry; plea in bar, that plaintiff, ſeiſed of houſes

houſes and lands, had *common* of paſture, parcel of the field, every year in which the field was ſown with peaſe from feſtival to feſtival; replication, that B. was ſeiſed of the manor whereof paſture in which, &c. is parcel, and R. being ſeiſed of the ſaid houſes and lands held of the manor in ſocage, and R. within memory enfeoffed B. of, &c. and B. afterwards enfeoffed defendant of the manor, and the *common* thereby extinguiſhed by unity of poſſeſſion, *non prof.* thereupon, 3. *Br.* 302. Similar avowry; plea in bar, that plaintiff, a vicar, being ſeiſed of houſes and half a yardland of land in right of his vicarage, had common in two acres of land in which, &c. for two years ſucceſſively after corn cut and carried off from the field called W. whereof, &c. until reſown, and that from time, &c. the field lay fallow; replication, that the vicars had common as well in the ſaid field called W. whereof, &c. as in another field called C. and that one E. ſeiſed of two acres in the ſaid field called C. enfeoffed H. then vicar, to hold to him and his ſucceſſors in fee, and thereby the common was extinguiſhed; rejoinder, maintaining the bar, and traverſing the feoffment, 3. *Br.* 318.

Plea in bar to ſimilar avowry, that defendant, ſeiſed, &c. had *common*, &c.; replication, that *locus*, &c. lays in a common field where there are other lands in which is *common* of paſture of two acres, of which one R. ſeiſed, enfeoffed plaintiff; demurrer, *Her.* 678.

Avowry, damage feaſant in freehold; plea in bar, that plaintiff ſeiſed of a cloſe of paſture adjoining *locus*, &c. and that defendant ought to repair the hedges, &c.; replication, that the ſaid cloſe of paſture is the freehold of J. and traverſe that plaintiff is ſeiſed, *Dy.* 365.

That J. ſeiſed of a cloſe, demiſed to defendant for years, who took the cattle damage feaſant; plea, that T. ſeiſed of twenty-ſeven acres of land called C. adjoining the cloſe, and that J. ought to repair the hedge and gate between the lands, T. enfeoffed M. and E. his wife, M. died, and E. took to huſband, &c. who demiſed to plaintiff, and through *defect of gate and hedges* being thrown down, cattle entered; replication, that defendant made a ſufficient gate, &c. and that there is a way leading through the lands, and the gate hung upon two poſts in the ground of defendant, parcel of the way, and that plaintiff pulled up one poſt and the gate, which he carried, whereby the cattle eſcaped; rejoinder, that plaintiff before erected a gate upon one poſt for preſerving the corn in defect of defendant's fence, and that he afterwards pulled up the ſaid poſt and gate, &c. and traverſe the gate hanging upon poſts in defendant's land, 3. *Br.* 321.

Avowry, damage feaſant in the freehold; plea, that H. ſeiſed of lands, had common by himſelf and tenants in a paſture called B. and P. adjoining *locus*, &c. without fences, and in W. whereof *locus*, &c. was parcel, for all cattle throughout the year, H. demiſed to plaintiff, who put cattle in B. and they eſcaped over from B. and P. in W. in which, &c. to *common*; ſpecial demurrer, *Wi. Ent.* 816.

Avowry, damage feaſant by aſſignee of a term; plea, that within the manor there is a certain cuſtom, that every *copyholder* and farmer hath common of paſture in C. adjoining contiguous to *locus*, &c. for all geldings, mares, and cows levant, &c. throughout the year, that R. was a copyholder of the cottage and lands that plaintiff demiſed, who put in the cattle to *common*, and that defendant and all thoſe whoſe, &c. uſed to make fences between the common and *locus*, &c. through defect of which cattle entered; demurrer, *Wi. Ent.* 928.

Avowry for rent arrear on demiſe; plea, that plaintiff, ſeiſed of one cloſe of paſture near ſaid *locus*, &c. and defendant and all, &c. were accuſtomed to repair the hedges between *locus*, &c. and plaintiff's cloſe, for defect of which the cattle entered; demurrer, 2. *Saun.* 284. Judgment for defendant and affirmed on error, *Wi. Ent.* 489.

Diſtreſs as bailiff of J. B. for damage feaſant; plea, by a licence under the deviſe M. B. made to him by R. S. lord of the manor of T. to carry coals to the [illegible] way by the uſual way, &c.; replication, confeſſes the deviſe, but ſays that

at

at the time of the demiſe the *locus*, &c was copyhold of the ſaid manor, and before one ſir W S the lord granted to T. T who ſurrendered to the uſe of S I and his heirs &c that before the ſaid demiſe the ſaid ſir W. S enfeoffed the ſaid R S to hold to him and his heirs, &c and after the ſaid demiſe the ſaid R. S enfeoffed of the *locus*, &c for that the copyhold was extinct, he died ſeiſed and it deſcended to I his ſon, who enfeoffed the ſaid J B. &c.; demurrer, 2 *Lu.* 1241.

Avowry, that W ſeiſed, demiſed five acres of land to defendant, in which he put the cattle damage feaſant, plea, &c that the ſaid five acres are one cloſe, and that W and all other tenants whereof, &c were accuſtomed to incloſe, and the plaintiff is ſeiſed of the adjoining land, from which cattle eſcaped through defect of fences, replication, traverſes the preſcription or uſage, *Ra. Ent.* 560. *Ipp* 111

Avowry, damage feaſant in the freefield, plea, that W ſeiſed of the cloſe called M demiſed to plaintiff at will and did not all thoſe, &c. made a hedge between the cloſes, and the cattle entered through defect of the fence, replication that plaintiff's cattle violently broke the hedge, rejoinder, that hedge broken in ruinous, *Ra Ent* 561. *Hil* 3

Avowry, that defendant is a *copyholder*, and that within the manor there is a cuſtom, that every tenant ſhould have common in *locus*, &c for all commonable cattle levant upon the tenements, &c for a year, and that he took plaintiff's cattle damage feaſant, *Ha Ent* 912

Cognizance as bailiff of G. damage feaſant in freehold, bar, common of paſture, 1. *Bro* 304.

The defendant ſeiſed of houſe and land, hid *cattle* in *locus*, &c for all commonable cattle for the year round, and took the cattle damage feaſant; bar, that the rector of the church ſeiſed of the manor and rectory, had *common* of paſture for all commonable tenants of houſes and lands for all commonable cattle for the whole year, replication, maintaining avowry, and traverſes the preſcription, *C Ent* 573

That defendant ſeiſed of houſes and land had *common* in lands, parcel of the manor, from the Purification till the 1 of Auguſt, and plaintiff had all the herbage from the firſt day of Auguſt until the feaſt of the Purification, and afterwards to the mid day of Auguſt for three horſes only, and that defendant took the cattle through the paſture, bar, that plaintiff, ſeiſed of the manor where, &c. put his cattle in *locum* &c and demurrer, 2 *Bl Rep* 61.

That defendant ſeiſed of houſes and land, had *common* of paſture in *locus*, &c for all cattle levant, &c for the whole year, and that he took the cattle damage feaſant, bar, that plaintiff, ſeiſed of houſes and lands, had common of paſture in lands adjoining, *locus*, &c without force, and in *locus*, &c *per cauſe* &c depaſturing, and ſo defendant had commoned in the full lawful *per cauſe de vicinage*; replication, maintaining avowry, and traverſe preſcription, 3 *Br* 299

That defendant, ſeiſed, had common of paſture in the meadow, &c.; bar, that plaintiff is ſeiſed of five acres, parcel of the meadow, and put in cattle there to depaſture, and traverſes preſcription, *Ha* 66.

Verdict for plaintiff for common of paſture, *Ra Ent* 560.

Avowries and Cognizances (and Pleas in Bar to) under Diſtreſſes for Fines and Amerciaments.

PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.

I.
II.
III.

Declaration in replevin; cognizance for a *diſtreſs* for a *fine* at a court leet; demurrer and joinder.

Declaration, avowry, and cognizance, damage feaſant; plea in bar, that *locus* is copyhold, held of the manor of Buſhey; replication, that the land is held of the manor of B.; rejoinder, proteſting that fine is unreaſonable, pleads a cuſtom to pay a year's value only; demurrer and joinder. Judgment for plaintiff.

Avowry as bailiff, that they took the plaintiff's gelding for an amerciament by the court for the city of Carliſle, upon a preſentment that the plaintiff uſed a falſe meaſure, ſetting out the juriſdiction of the corporation at large; plea in bar to the laſt avowry, proteſting againſt the ſufficiency of it, and the cuſtom, admitting the exiſtence of the corporation, but ſaying that they took the horſe *de injuria*, and without the reſidue of the cauſe alledged.

Cognizance as bailiffs, for taking ſix pewter diſhes as a diſtreſs for an amerciament.

Plea in bar, that defendant *de injuria*, &c.

Avowry and cognizance to declaration for ſeizing plaintiff's cattle, that the *locus in quo* was parcel of the manor of S. of which avowants were ſeiſed, who preſcribe for a court leet, at which plaintiff was preſented for not opening the king's highway within the manor, which he himſelf had ſtopped up, and that he was amerced, and that amerciament aſſeered, and plaintiff ordered to open the way, of which he had notice; that it was afterwards preſented that he did not open it; ſuggeſtion of the death of one of the lords; avowry for the amerciament; plea in bar, proteſting that there was no ſuch king's highway, ſays that the way was not ſtraightened and ſtopped, in manner and form; ſpecial demurrer, becauſe the amerciament traverſed is not traverſable, and is traverſed otherwiſe than alledged in the declaration; joinder in demurrer. Lill. Ent. 363 to 364

Replevin for taking a mare at S. in the county of S.; defendant makes cognizance as bailiff of the lord of the manor; preſcription to hold a court leet; preſcription for the homage to chuſe conſtable, who is to take the office and the oath for the due execution of it, under a penalty to be impoſed by the homage, that the plaintiff was choſen conſtable by the homage; that the plaintiff had refuſed to take on him the office and the oath; plaintiff is fined forty ſhillings, for payment of which defendant took the mare; [illegible] to the cognizance; joinder, *cur. adv. vult.* 3. Ld. Raym. 4. Ed.

[illegible] replevin for taking plaintiff's cattle) for a diſtreſs [illegible] amerciament at a court leet; ſeiſin; preſcription;

court

PRECEDENTS in Books of PRACTICE, REPORTERS, &c.

court leet; preſentment for ſtopping a way; amerciament aſeered; order to open the way; notice; preſentment that way was not opened; death of one of the lords; avowry for non payment; plea in bar, proteſting there was no ſuch way, ſays he did not ſtop it; demurrer and joinder in demurrer, - Gilb. Dif. & Rep. by Hunt, 250 to 257

Cognizance to replevin, for taking plaintiff's cow for a diſtreſs for a fine at a court leet; ſeiſin in fee; preſcription for a court leet; cuſtom to chuſe a conſtable; objected, that it ſhould be for one year next enſuing a court leet held; the plaintiff elected conſtable; the order of the jury; the penalty for not ſerving; demurrer and joinder. - *Ibid.* 258 to 262

Replevin for one caſk of pepper in Jamaica, and four other caſks, and one parcel of *ſebi*; plea, that defendants were conſtables, and ſeized the ſame under a warrant of juſtice of peace, after conviction of the ſtatute, - - Com. Rep. 274

For keeping dogs and killing hares, not being qualified; replication, that he had land and tenements to the value of four hundred pounds *per ann.* and iſſue, - - *Ibid.* 274

For amerciament in court baron, for cutting and carrying away furze, called goge, in N. parcel of the manor, 1. *Bro.* 308.

For a cuſtom for all the inhabitants within the *vill* to cut furze for fuel to be burnt in their houſes, 1. *Bro.* 309.

Avowry on a warrant of two juſtices of the peace, for non-payment of a *rate* for relief of the poor; demurrer; judgment for defendant, 2. *Lut.* 1179.

Cognizance as bailiff of the lord of the manor, for an amerciament in the leet *for not repairing a bridge*; bar, proteſting that *locus*, &c. is out of the juriſdiction of the leet; plea, he took the cattle *de injuria*, &c. *abſque non*, that they are uſed to repair; iſſue on the uſage, *Pl. Gen.* 508.

Cognizance as bailiff for an amerciament for not doing ſuit at the leet, *Pl. Gen.* 508.

Avowry, that the dean and chapter of Weſtminſter were ſeiſed of the manor of D. in fee in right of the church, in which is a cuſtom, that all the tenants of the lands in E. (having common of paſture to their tenements belonging), have uſed to repair a bridge in E. alſo another cuſtom for the ſteward with the aſſent of the homage to make bye laws, and impoſe penalties, and the lord to diſtrain, &c. then the avowant claims title from the dean and chapter; alſo a preſentment of the bridge being out of repair, with an ordinance that the inhabitants ſhould repair on forfeiture of five pounds; that the plaintiffs were commoners and inhabitants, and had notice; that it was afterwards preſented.

Avowry, damage feaſant in the freehold held of him and the earl of E.; bar, that land is cuſtomary, and pleads his admiſſion by the defendant and the earl; replication, that the land is of the annual value of twenty-eight pounds, and *fine* for the admiſſion aſſeſſed at thirty-five pounds, and for non-payment, entry, and *forfeiture*; rejoinder, the value of one year *only* by the cuſtom, 3. *Leo.* 249. demurrer, for that the value of land reſts in eſtimation, and that the *cuſtom* is inſufficient and prays judgment and a return, together with damages, according to the form of the ſtatute, *Ibid.* 254. Judgment for plaintiff.

That J. was ſeiſed of houſes and lands, which he held of the dean and chapter of the church of C. as of the manor of M. by certain ſervices and rents, and by cuſtom upon every alienation in fee, or for the life of any one; parcel of the lands held of the manor had one year and a half rent, by which ſuch lands were

held of the manor in the name of a *fine* for alienation, and for non-payment thereof the lord diſtrains; J. aliened to W. who aliened to C. and defendant, as bailiff, makes cognizance of taking the cattle for non payment of the ſaid two ſeveral fines; demurrer, 2. *Ven.* 131.

Avowry for a *penalty* for breach of a *bye law* made in the court baron for incloſi lands in a common field, in the ſame yea without conſent of the tenants having common there, *Wi. Ent.* 899. Bar, proteſting that there is no ſuch cuſtom, and that it was not preſented by the homage that plaintiff had incloſed, for plea, that defendant *de injuria* took the cattle, and traverſes the homage made a bye law; iſſue, *Wi. Ent.* 900. *Mo.* 75.

That plaintiffs and others were impannelled on the homage of defendant's court baron, and had a day to give in their verdict until the next court, and then were impannelled on another homage, and were required to give in their verdict, and plaintiff left his companions, for which the ſteward impoſed upon him a *fine* of twenty ſhillings, for not giving in their firſt verdict, and ten ſhillings for the *ſecond*; bar, as to the ſaid twenty ſhillings, that he offered the verdict and the ſteward refuſed to take it; replication, that he did not refuſe; and as to ten ſhillings for the ſecond default; demurrer, *Ro. Ent.* 571.

That defendant, ſeiſed of the manor, had a view of frankpledge, and the jury on the view of frankpledge uſed annually to elect a conſtable, who, if preſent, was then ſworn in court, and plaintiff being elected conſtable, refuſed to take the oath, *per quod* the ſteward impoſed a *fine* upon him, *Co. Ent.* 572.

Avowry, ſimilar, where plaintiff, elected conſtable, was not preſent at the election, and afterwards refuſed the office, for which he was *amerced* at another court; bar, that at the time of the election he was not reſident within the leet, 3. *Bro.* 337.

That defendant, ſeiſed of the hundred in which the *vill* of E. is ſituate, had a leet twice *per ann.* to which the tithing man and four men of E. were uſed to appear, and ſwear to preſent, and to pay twelvepence for a common *fine*: and plaintiff and the other four appearing, refuſed to ſwear, for which the ſteward impoſed a *fine* on each of them; bar, that T. ſeiſed of the manor of E. had a leet there for all the inhabitants, and all matters, &c. and traverſes that the tithing man and four men were uſed to be ſworn in the hundred to preſent, &c. *Aſh.* 408.

That defendant, ſeiſed of the manor within the hundred and of the hundred, had a view of frankpledge for the manor of all the inhabitants within the hundred, and plaintiff was preſented by the jury for a nuiſance and ſtopping a way, and had a day to appear under a penalty, which he did not do, whereof he was preſented at the next court, *Co. Ent.* 573.

That at a view of frankpledge of the manor of defendant, *penalty* was impoſed upon plaintiff for not repairing, which he did not, *Wilk.* 283.

That plaintiff held lands of defendant by fealty rent and ſuit of court, and was preſented at the court baron that plaintiff had incloſed a common pool in which the inhabitants watered their cattle, and part thereof was upon the waſte of the manor, and a fine was impoſed for his appearance on a certain day, which he did not do, whereof there was a preſentment at another court; bar, proteſting, &c. for plea, that pool was plaintiff's own pool, and traverſes that it was a common pool, *Her.* 683.

Avowry for amerciament of a reſiant, for not appearing at the leet, *Mo.* 89. 1. *Bro.* 306.

That [illegible]ing, ſeiſed of the hundred and view of frankpledge of all the inhabitants, granted the hundred to A. for life, and reverſion of an abbey in fee; A. died, avowry by the abbot for an amerciament, and not appearing at the leet, *Ro. Ent.* 553. *Vet. Int.* 200.

For an amerciament of chief pledge, for not coming to the leet; bar, that he was reſiant within another leet in the ſame vill, H. 4. E. 3. 27, 28.

For

For amerciament in the leet of a brewer againſt the aſſize; bar, that he was amerced at another leet in the ſame vill, and for the ſame default, H. 4. E. 3. 26.

That the abbot was ſeiſed by preſcription of the hundred and town belonging to him, and the ſteward and four men of the vill of H. were uſed on notice to come to the town, and enquire with others of articles, and in default thereof the whole village to be amerced, and the ſteward omit to attend the town; bar, that prior was ſeiſed of the manor, had a view of frankpledge of all reſiants twice a year, and the inhabitants of the vill were uſed to appear there, and not at any other court; and traverſe, that the ſteward and four men of the vill were uſed to appear at the town of the hundred, *Ra. Ent.* 553. *Vet. Int.* 216.

For an amerciament in view of frankpledges of the manor for purpreſture; bar, that the plaintiff had a manor and view of frankpledge belonging to him in the ſame vill, and that *locus*, &c. is in the county; replication, that plaintiff has not the manor, II. 4. E. 3. 25.

For amerciament in court baron, for ſurcharging common; bar, by preſcription of common; and traverſe, that at the time of the amerciament, he was reſident within the manor, 1. *Br.* 11.

That defendant is ſeiſed of the manor whereof three mills and houſes, in which, &c. are parcel, and there is a cuſtom, that occupiers of houſes, parcel of the manor, grind their corn at the lord's mill, and in default thereof were amerced, and that plaintiff was amerced for not doing ſuit at the mill; bar, proteſting, &c.; plea, that houſes are not parcel of the manor, *Her.* 665.

Bar (for not attending at the leet), proteſting, &c. for plea, that he was reſiant within another manor; and traverſes that he was reſident within the lordſhip and manor of S. 1. *Bro.* 307.

Avowry, for amerciament of a reſiant, for not attending leet of defendant, a new grant by letters-patent of the tenement; bar, that in the letters patent it is provided, that the grant of defendant ſhould not extend to any perſon who held immediately of our lord the king, as of any manor where the king had a leet, and that plaintiff held of our lord the king houſes and lands by fealty, rent, and ſuit of court of the hundred, ſervice throughout the year; demurrer, *Wi. Ent.* 873.

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98. Avowry by leſſee of *tenant by elegit*, for damage feaſant.

Avowry, that J. poſſeſſed of lands by extent of ſtatute ſtaple, granted his eſtate to E. who *demiſed* to M. who made defendant *executors*, who avow damage feaſant, plaintiff *non. prof.* his own writ, judgment for defendant *to have return* of cattle, and enquiry of damages awarded, *Wi. Ent.* 852.

Avowry, by virtue of an attachment out of the county court againſt N. D.; bar, that plaintiff was poſſeſſed, and traverſe that N. D. was poſſeſſed, and iſſue, 2. *Lut.* 1196.

Avowry, by virtue of a *levari facias* out of the court baron; demurrer, *Mo. Int.* 310.

Avowry, that J. ſeiſed, demiſed to F. for years, who deviſed to E. his wife for life, remainder to daughter in tail. M. took to huſband D. who granted to plaintiff, who

who acknowledged *ſtatute ſtaple* to defendant, whereon there was an extent *liberate*; plea, uſurious between plaintiff and D.; *nil dicit* thereto, *Her.* 621.
Avowry, by virtue of a *warrant* of two juſtices of the peace, for a *poor's rate*; demurrer; judgment for defendant, 2. *Lut.* 1179.
Cognizance by one defendant, for taking of a cow, &c. as bailiff to ſheriff of Y. and two others, as ſervants, for that one N. D. was poſſeſſed of them, &c. and that defendant levied his plaint in the county court againſt him on *juſtices* for fourteen pounds debt; precept of ſummons on it, return, and attachment awarded, delivery of it to defendant, by virtue of which, &c.; bar, that *he* was poſſeſſed, &c.; and traverſe, that the ſaid N. was poſſeſſed; replication, and iſſue on the traverſe, 2. *Lut.* 1190.
Cognizance as bailiff of a manor, on an execution to levy damages recovered in treſpaſs in the court baron; demurrer, *Pl. Gen.* 514.

VI. Avowries, &c. for Rents, Services, Cuſtoms, Tolls, and Salvage of Wrecks.

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102. Cognizance as bailiff of the corporation of the city of London, the governors of Bridewell and St. Thomas hoſpital, for *rent* arrear under a demiſe by them to the plaintiff to pay quarterly; 2d cognizance, for rent under a demiſe by them to another perſon; judgment for defendant.
103. Avowry and cognizance for rent arrear on demiſe;
104. plea in bar, that plaintiff, after the ſaid rent became due, and before the taking of the diſtreſs, tendered
105. the rent; replication, taking iſſue on the tender.
105. Avowry, for rent; plea in bar, *de injuria*, &c. and tra-
106. verſes the demiſe; replication, taking iſſue on the traverſe.
106. Avowry 1ſt, for four year's rent of *locus* from one J. W. who was defendant's tenant; 2d, for four year's rent in arrear from J. W. before he became a *bankrupt*, and from plaintiffs as his *aſſignees* after his bank-
107. ruptcy; plea in bar to the firſt avowry, *de injuria*, and traverſe of J. W.'s enjoying the premiſes; & 2d
108. avowry, *de injuria*, and a like traverſe; replication, iſſue on the traverſe.
109. Declaration in replevin for ſeizing cattle, &c.; cognizance for one quarter of a year's rent; 2d cognizance, *for an increaſed rent* of five pounds per acre for every acre ploughed up, payable on the ſame day as the other rent; 3d cognizance, for both rents
112. joined; plea in bar, that after rent due, and before diſtreſs, that plaintiff tendered the rent; 2d plea to firſt cognizance, *de injuria*, and traverſe of plaintiff holding *locus*; 3d plea to firſt cognizance, *de injuria*, &c. and traverſe of rent being in arrear; to 2d cognizance, *de injuria*, and traverſes plaintiff's holding;
113. 2d plea to 2d cognizance, *de injuria*, &c. traverſing that rent became due to defendant; to 2d cognizance, *de injuria*, &c. and traverſes of plaintiff's en-

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joying; 2d plea to 3d cognizance, that after it became due, and before diſtreſs the plaintiff offered to pay, &c.; 3d plea to 3d cognizance, *de injuria*, &c. and traverſe that the two hundred and ſeventy-eight
114. pounds ever became due; replication, iſſue on all the pleas; poſtea.

117. Avowry, as *adminiſtratrix*, and cognizance, as bailiff, that T. H. ſeiſed in fee of a rent-charge of ſix ſhillings iſſuing out of *locus*, and T. H. being, &c. and plaintiff being ſeiſed of *locus*, three pounds twelve ſhillings of rent for twelve years became due to T. H. in his lifetime, and is unpaid as adminiſtratrix, ad-
118. miniſtration granted, &c.; 2d avowry and cognizance, for a quit rent of ſix ſhillings; 3d, ſimilar;
119. 4th, avowry and cognizance, that defendant, ſeiſed
120. of a fee-farm rent iſſuing out of *locus*; plea in bar, proteſting that A. B. was not ſeiſed, &c.

121. Avowry, by an *executor*, for rent accrued in the lifetime of teſtator.

122. Avowry, for undivided moiety of the rent of *locus*; plea in bar, *de injuria*, &c. and traverſe the holding.

123. Cognizance, as bailiffs to the mayor, &c. of Newcaſtle, under a cuſtom to take *toll* of all wine imported therein, they having always repaired the port at their own expence, and becauſe plaintiff refuſed to pay de-
125. fendant, well acknowledged; plea in bar, that defendant, *de injuria*, &c. and traverſe of the cuſtom; 2d, that plaintiff is a burgeſs of B. in Yorkſhire, and that the burgeſſes of B. from time whereof, &c. were free and exempt from the payment of all tolls for goods
126. imported, unleſs into the port of London; replication, maintaining the cuſtom, and replication to 2d plea; traverſe of exemption of burgeſſes in B. mentioned in 2d plea; iſſues thereon.

126. Declaration for taking plaintiff's cattle and goods of plaintiff in a place called B.; avowry for rent arrear, and juſtifies taking diſtreſs in ſeveral places, hav-
127. ing been fraudulently carried off the premiſes; plea in bar, *nil* rent arrear.

128. Cognizance, as bailiff to an adminiſtrator *de bonis non*, for rent in arrear in the lifetime of the inteſtate; plea in bar, admitting the adminiſtration, and that defendant
129. was bailiff, but the defendant, *de injuria*, &c.; 2d plea, that he did not hold the *locus* under the demiſe in the cognizance, until the ſaid time when, &c. or for ſix months, until the ſaid time when, &c.; 3d plea, that plaintiff was tenant at will to lord P. that he died, upon whoſe death tenancy at will determined, and the ſame deſcended to his two aunts, who demiſed the ſame to plaintiff and her huſband; huſband died, and tenancy ceaſed; two coheirs demiſed to plaintiff, who entered, and put the cattle into the premiſes.

131. Avowry

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131. Avowry (for taking cattle, that the *locus* is a waſte, parcel of the manor of A. and that one A. B. was lord of the manor, who was accuſtomed to hold a court baron for the regulation of the waſtes, and that at a court leet duly held it was ordered, that no perſon ſhould turn out any cattle without a drover, and that the court appointed officers to ſuperintend the waſte, who, if they found any cattle without a drover, were to impound; that defendant was choſen one of the officers, and becauſe he found the cattle without a drover, avows taking them, damage feaſant; 2d avowry.

134. (*See* Avowry for *Fines* and *Amerciaments*, ante); plea in bar to firſt avowry, *de injuria*, and traverſe of preſcription to hold courts, and tender of amends.

135. Cognizance (for taking a ſpit) the bailiffs of A. B. that the *houſe* in which, &c. was held of the manor of C. whereof A. B. was lord, by *fealty* and doing *ſervice* at the court baron; that plaintiff being ſeiſed of the houſe, and the lord intending to hold a court baron, of which plaintiff had notice, but he did not appear, whereby the lord was prevented from holding a court, wherefore the defendants well acknowledge the taking as a diſtreſs, &c.; plea in bar, that no court baron was held, and that the lord had not been ſeiſed of *locus* for the ſpace of forty years, and traverſes holding by *fealty*.

138. Cognizance for *part* of a quarter of a year's rent, and a whole half year's rent.

139. Cognizance, damage feaſant; plea, that before A. B. had any thing in *locus* queen Elizabeth was ſeiſed in fee *in right of her dutchy* of Lancaſter, and granted by her letters-patent under the great ſeal to the corporation of Daventry, a market in *locus*, and two fairs, as by the letters-patent appears; by virtue whereof the corporation were ſeiſed; that at one of the fairs the plaintiff bought the ſheep, and paid for the toll thereof, and had the ſheep in his cuſtody until

140. taken away by the defendants; demurrer.

150. Avowry for half a year's rent in arrear under a demiſe to the plaintiff of the dwelling-houſe by the avowant and one P. M. deceaſed, whom the avowant ſurvived;

151. 2d avowry, to pay the rent quarterly; 3d, half-yearly; 4th, like 2d, but by avowant only.

Pleas in bar, 1ſt, that the plaintiff did not hold the premiſes under demiſe from the defendant; 2d, that the defendant entered into part of the demiſed premiſes, and expelled plaintiff thereout; replication, that defendant did not enter into part of the premiſes, and expel the plaintiff therefrom. - - - - - Mor. Pr. 593. 595

Plea in bar, 1ſt, as to the part of the rent, that the ſame was not in arrear; 2d, as to the reſidue, plaintiff attended until ſun-ſet on Lady-day, and offered to pay the rent, but defen-

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dant was not there, nor was any one of them ready to receive the ſame, nor was any demand made, - - Mor. Pr. 595

Replication, that plaintiff did not offer to pay the ſaid rent, - - - - - *Ibid.* 597

Plea, of the tender of the rent, - - - *Ibid.* 598

Replication, that plaintiff did not offer to pay the ſame, - *Ibid.* 599

Cognizance as bailiffs, J. F. ſeiſed in fee by indenture, grants a yearly rent iſſuing out of the *locus in quo*, &c. to W. L. and M. his wife, and the heirs of the body of M. to be begotten by W. with power of diſtreſs. W. L. and M. his wife ſeiſed of the rent in fee tail, W. L. and M. leaving iſſue only M. their daughter, ſeiſed of the rent in tail, marries E. J. leaves iſſue M. her daughter; E. J. becomes tenant by the curteſy, and dies; M. their daughter, becomes ſeiſed, &c. marries J. D. who dies, ſhe marries W. B. a fine levied between S. P. plaintiff, and W. B. and defendants, the fine levied to the uſe of the ſaid S. P. in fee, S. P. ſeiſed in fee wholly by will deviſes it to W. D. in fee, W. D. ſeiſed of the rent in fee, it deſcends to S. D. as his heir S. D. ſeiſed in fee, for rent arrear makes cognizance as bailiff of ſaid J. D.; bar, that the fine was levied to the uſe of M. B.; replication, taking iſſue thereon, 2. R. Pr. C. B. 347

Avowry, by a churchwarden in the name of a diſtreſs, on the ſtatute of 43. Eliz.; replication, *de injuria ſua propria abſque tali cauſa*, - - - - *Ibid.* 855

Writ of falſe judgment in replevin (*See* WRITS, *poſt.*) - *Ibid.* 856

Cognizance for ſeizing houſhold goods for a poor's rate; replication, *de injuria*, &c. - - - Lill. Ent. 349

Record of a plaint in the county court removed by *re. fa. lo.* into the king's bench, where the plaintiff in replevin declares for ſeizing a *wreck* on the ſea ſhore; the defendant ſtates in his avowry, that the goods and chattels mentioned in the declaration were loaded on board a certain ſhip floating on the high ſeas, near the iſle of Sheppy, in the county of Kent, and that a violent ſtorm aroſe, and drove the veſſel againſt the ſhore; that the crew were nearly being drowned, and to preſerve their lives deſerted the ſhip and cargo; that certain unknown perſons on the ſame night ſtole part of the cargo, and that defendant being ignorant to whom the goods belonged, and obſerving no perſon taking care of the cargo, in order to preſerve them at great expence and trouble, removed them to a place of ſafety until, &c. and therefore reaſonably deſerved to have one hundred and fifty pounds, which he demanded of plaintiffs, and therefore offered to deliver up the goods upon payment thereof, which plaintiffs refuſed to pay, for which reaſon he detained them; replication, *de injuria*; award of *venire*, and ſuggeſtion of the death of one of the plaintiffs before the return thereof, - - - - *Ibid.* 349

Record in replevin, being a return by the corporation of Windſor to a writ of error from B. R. to them, ſtating the placita the letters-patent; plaint levied the proceſs, the re-

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turn; warrants of attorney; leave to declare till the next court; further leave; the declaration for diſtraining houſehold goods; imparlance, further imparlance; plea of property in a ſtranger; imparlance, and further imparlance; general demurrer; plea; imparlance, and further imparlance; removal of mayor, bailiff, and ſteward, and election of new ones; further imparlance; continuance and judgment for the defendant of *nil capiat per* declaration, and of return *irreplevisable*, - - - Lill. Ent. 353 to 356

Plea of property in a ſtranger to a declaration in B. R. for taking cattle on a highway; replication, that the property was in plaintiff, as alledged in declaration; and iſſue, - *Ibid.* 357

Cognizance as bailiff of the lord of the manor for a rent charge; plea in bar, that the principal was not ſeiſed as alledged; replication, that he was ſeiſed as alledged; and iſſue, - - - - *Ibid.* 360

Plea in bar of *non dimiſit* to avowry, for rent in arrear, - Clift. Ent. 641

Avowry for ten years, arrears of a freehold rent demiſed from one of two tenants in *coparcenary* of the *locus in quo*, who made partition, &c. the rent in queſtion was allotted to one under whom defendant claims for equality of partition; plea in bar to avowry, traverſing partition made, - - Pl. Aſſ. 463

Avowry, for rent in arrear, for *locus in quo*, part freehold, and part copyhold, held by plaintiff of defendant, in which the title is particularly deduced; plea in bar, 1ſt, *de injuria*, &c. and traverſe of demiſe; 2d, that defendant evicted plaintiff before the rent diſtrained for became due, - *Ibid.* 479

Replevin, avowry for rent for enjoyment of land under a parol demiſe; cognizance for the like by the leave of the court; plea to the avowry, that defendant took the cattle of his own wrong; iſſue to the country; plea in bar to the avowry, by leave, &c. that the defendant *nil habuit* in tenements; the like plea in bar to the cognizance, by leave, &c.; demurrer to the plea in bar to the avowry; ſpecial cauſe of demurrer; demurrer to the plea in bar to the cognizance; ſpecial cauſe of demurrer; joinder in demurrer as to avowry, the like as to the cognizance, - - - 2. Wilſ. 208

Cognizance as bailiffs of an executor; grant of a rent charge; clauſe of diſtreſs for rent in arrear due to the teſtator in his lifetime; they acknowledge the taking of the cattle; demurrer; cauſe of demurrer, and joinder; prays judgment *de retorno habendo*, - - - 3. Ld. Raym. 4. N. Ed. 139

Cognizance to replevin, for taking a braſs pan, as bailiffs of lord of the manor; that they took the pan for rent in arrear, and not doing ſuit of court; plea in bar, proteſting that the lord of the manor was not ſeiſed of the ſervices aforeſaid; for plea, ſays, that H. T. held the tenements of the ſaid lord of his manor of M. by rent of four pounds *per annum*, payable at the feaſt of St. Michael only, and traverſes that he held the ſame by rent of four pounds *per annum*, and ſuit of court; replication, taking iſſue on the

traverſe,

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traverſe, *re. fa. ni. pri.* awarded; poſtea; tales; ſpecial verdict, - - - - - - Ld. Raym. 881

Avowry and cognizance to a replevin, that a cuſtom that every tenant ſhall have to his own uſe a way-going crop, and depoſit it in his barns and outhouſes, and keep the ſame there until the firſt day of May next after reaping; plea in bar, proteſting no ſuch cuſtom; ſays, that the goods and chattels were diſtrained after the expiration of ten calendar months next after the end of ſaid demiſe, - - - 1. H. Bl. Rep. 5

Avowry and cognizance to a replevin, for taking the goods of plaintiff, that W. B. deceaſed, held under a demiſe; and that E B. his adminiſtratrix, held the ſame places from the death of W. B. until the expiration of the term, at a certain yearly rent, and avows the taking as a diſtreſs for rent for ſix years arrear of rent at ſixty-five pounds three ſhillings *per annum*, and that adminiſtratrix continued in poſſeſſion from the determination of the ſaid term until the time when, &c.; 2d cognizance and avowry, taking the yearly rent to be forty-two pounds, and arrear two hundred and fifty-two pounds; 3d, ſtated that W. B. deceaſed, in his lifetime, and the ſaid E. held the ſaid places, &c. viz. W. B for and during the time laſt aforeſaid until his death, and the ſaid from his death for the reſidue of the term; general demurrer to each avowry and cognizance, and joinder, - - - - - - 1. H. Bl. Rep. 465

Replevin, for taking goods and chattels, to wit, one lime kiln; avowry, for rent in arrear; plea in bar, that the lime kiln, before and at the ſaid time when, &c. was affixed to the freehold; demurrer, - - - - 4. T. Rep. 504

Replevin, for taking goods in plaintiff's dwelling-houſe; plea, that payment of a ground rent was made to the original landlord; demurrer, - - - - 4. T. R. 311

Replevin; avowry, ſtating that J. B. ſeiſed in fee, deviſed to wife for life, remainder to ſon J. B. charging premiſes with an annuity, and acknowledged taking as a diſtreſs for arrear of the annuity; plea in bar, that J. B. in his lifetime, by deed, which ſaid deed is loſt and deſtroyed by time and accident, releaſed the ſaid J. B. from the payment of the ſaid annuity; demurrer, - - - - 3. T. R. 131

Cognizance for ſeizing a ſilver porringer by overſeers for a poor's rate; replication, *de injuria ſua propria*, Gilb. on Diſt. and Rep. by Hunt 238

Avowry to declaration in replevin, for ſeizing goods and chattels for rent in arrear; that ſir B. M. ſeiſed in fee of the place where, &c. demiſed it to the defendant for fifty-one years, who demiſed it to plaintiff for a year at fifteen pounds, and for three quarter's rent in arrear diſtrained; replication, that the rent was not in arrear; iſſue, - *Ibid.* 246

Cognizance as bailiff for a rent-charge; bar, that he was not ſeized; iſſue, - - - - - *Ibid.* 279

Avowry, ſeiſin in fee and cattle, damage feaſant; 2d, a demiſe for one year, and notice to quit, but holding over

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avows for double rent; plea in bar, that defendant demiſed from year to year; traverſe notice to quit, - -	3. Burr. 1603
Plea in bar to an avowry of diſtreſs for rent, that plaintiff ſet up his chariot in the *locus in quo*, being a coach-houſe and ſtanding at a common livery-ſtable keeper's livery ſtables,	3. Burr. 1498
Replevin, avowry, diſtreſs for a fee-farm rent, king James ſeiſed, granted, &c. by *meſne* conveyances title in avowant, - - - - - -	1. Stra. 106
Plea in bar to declaration in replevin, for diſtraining houſehold goods, that the property was in a ſtranger, and not in the plaintiff, - - - - - -	Lill. Ent. 354
Plea in bar, 1ſt, *de injuria*, traverſe of the demiſe; 2d, that defendant evicted plaintiff before the rent diſtrained for became due, - - - - -	Pl. Aſſ. 479
Plea in bar for an avowry, that the plaintiff tendered to the defendant ſufficient amends for the damages deficient,	Gilb. Diſt. & Repl. by Hunt, 286
Plea of *non cepit* and cognizance as bailiff, that they took the cattle damage feaſant on his glebe land, ſoil, and freehold, - - - - -	Mor. Pr. 600
Plea in bar, that ſaid H. T. cauſed the cattle to be wrongfully taken and impounded, and that the ſame were by fraud taken out of the pound, and driven on the glebe land of the ſaid H. T. to ſcreen their firſt taking and impounding, and the defendant took the cattle, and unjuſtly detained the ſame, - - - - -	*Ibid.* 601
Replication, that the cattle were in the *locus in quo* of plaintiff's wrong, - - - - -	*Ibid.* 602
Plea to an avowry, damage feaſant, that the treſpaſs was involuntary, and a tender of ſufficient amends, -	*Ibid.* 603
Rejoinder of tender of a reaſonable fine to a replication in replevin, the defendants entered lands for a forfeiture of non-payment of a fine, and afterwards diſtrained cattle, damage feaſant, - - - - -	Lill. Ent. 373
Avowry, that defendant held the *locus in quo* under a demiſe from E. N. and the cattle being therein eating up defendant's graſs, he took the ſame as a diſtreſs, damage feaſant, - - - - -	Mor. Pr. 604
Plea, that plaintiff's cattle eſcaped out of the king's highway adjoining unto the *locus in quo* through the defect of defendant's fences, - - - - -	Mor. Pr. 605
Replication, that the fences were in good repair, and the cattle unruly, and traverſes the fences being out of repair; rejoinder, that the fences were out of repair, -	*Ibid.* 607, 608
Replevin, for taking plaintiff's cattle; avowry, that defendant took them, damage feaſant; plea in bar, that the place in which, &c. is part of Eaſt Field, that plaintiff is ſeiſed of eighteen acres of land in B. and claims right of common in Eaſt Field for a certain time, and put in her cattle; the defendant replies, that there are in B. two fields, the Eaſt and Weſt Fields, and that the owners thereof intercommon while they lay unincloſed for a certain time;	

PRECEDENTS in BOOKS of PRACTICE, REPORTERS, &c.

that there is a cuſtom to incloſe, and that ſuch incloſure is freed from common of any other perſon, and that the perſon ſo incloſing frees and diſcharges all the unincloſed from all common in reſpect to ſuch land incloſed; that he incloſed the place in which, &c. whereby all the unincloſed lands were freed from his right of common, and that the place incloſed ought to be free from common of any other perſon; that the cattle were there of the plaintiff's own wrong, after the ſaid incloſure, doing damage, - - - 1. Wilſ. Rep. 269

Avowry, taking one horſe for rent, and another for not performing fealty, *Ra. Ent.* 576. *Vet. Int.* 92. 3. *Br.* 313. For homage and fealty, and fifty ſheep for a relief, *Ra. Ent.* 576. *Co. Ent.* 598. 4. *Co.* 88.

For one ox taken for homage, another for fealty, and another for caſtle-gard, fine, *wapentagii*, and ſheriff's aid, H. 3. E. 3. 19.

Avowry, homage, ſuit of court, and rent arrear, P. 10. E. 3. 45.

Avowry, for part of ſervices undone, M. 5. E. 3. 3.

Plea in abatement by one avowant by the other, &c. *Ra. Ent.* 569.

Cognizance, of taking for rent and ſervices; and traverſes the place of taking, *Tho.* 274.

Plea, that defendant took cattle in L. and not in D. and makes cognizance as the king's bailiff, for that he had *wardſhip* in parcel of the demeſnes of one who held *in caſtte*, *Pl. Gen.* 545.

Plea, that he took cattle in *alio loco* in the ſame vill, and avows taking for *ſervices*; replication that it is the *locus* in declaration, *Ra. Ent.* 554. *Her.* 667. Like replication, proteſting that *loci* are the ſame, *Ra. Ent.* 555. *Vet. Int.* 92.

Avowry by defendant, of taking the horſe in *alio loco* for *ſervices*, who in driving him to pound eſcaped to *locus* in declaration, where defendant took them in, *Ra. Ent.* 556. And where defendant came to diſtrain for *ſervices* in one place, the plaintiff drove cattle to place in declaration, where defendant took them again, *Ra. Ent.* 557.

Plea in bar to declaration, for taking in two places, that he took cattle in place called R. and drove them beyond the places in the declaration to impound; and traverſes caption *in locis* in declaration; avowry, for a return, *Her.* 679.

Cognizance for *ſervices* as bailiff, damage feaſant; bar, *non ballivus*, *Vet. Int.* 93.

That T. was ſeiſed of lands of the *tenure of Borough Engliſh*, which by *cuſtom* deſcended to his youngeſt ſon, and from him to defendant; plea in bar, that his ſon and heir of T. ſeiſed, demiſed lands to plaintiff and others, deceaſed, for their lives; and traverſes that lands are borough Engliſh, *Aſh.* 395.

Avowry for *rent* on a demiſe for years by coheirs of L. to whom J. ſeiſed, gave in tail general; plea, that J. ſeiſed, gave in tail ſpecial to J. with remainder to W. in tail; J. died without iſſue male, coheirs by *intruſion* demiſed to plaintiff; W. enters and demiſes to defendant; and traverſe gift in *tail* general, and iſſue, *Ra. Ent.* 568.

RENT CHARGE.

Avowry for an *annual rent* granted to defendant, *pro conſilio impendendo*; plea, that defendant was attainted and committed to priſon, ſo that plaintiff could not have acceſs to him for advice; demurrer, *Dyer*, 2.

For *annual rent* granted by biſhop to defendant and A. deceaſed, for executing the office of ſupervifor; plea, that the office was not grantable by ſtatute, unleſs to one perſon for life; demurrer, 10. *Co.* 58.

Avowry, for *rent charge*, and *nomine pœnæ*, 3. *Br.* 316. 1. *Br.* 24.

Avowry, for *rent in fee* granted to defendant, *nil dicit*, *Vet. Int.* 242.

Avowry, for rent deviſed to *feme* for life for jointure, 2. *Br.* 210.

That H. ſeiſed of the manor whereof, &c. granted to dean and chapter *annual rent in fee*; plea, that T. was firſt ſeiſed of manor until H. diſſeiſed him; T. re-entered, and grant of the rent was between diſſeiſin and re-entry; replication, that B. ſeiſed, gave the manor to H.; and traverſes diſſeiſin, *Ra. Ent.* 558. *Vet. Int.* 93. *Up.* 87.

That D. ſeiſed of lands in fee, granted *rent charge*, with *nomine pœnæ* to H. in tail, from whom it deſcended to defendant, who avows for rent, and *nomine pœnæ*; plea, that J. was ſeiſed of lands; and traverſes that D. had any thing at the time of the grant, 1. *Br.* 24.

That E. ſeiſed of lands, granted *rent charge* for life; plea, proteſting that E. at the time of the grant ſuppoſed, *had nothing* in the lands; for plea, *non conceſſit*, 3. *Br.* 305.

Avowry, by the *heir*, for *rent* granted to the father in fee, *Up.* 104.

Avowry, for *rent charge*; plaintiff pleads demiſe to him for years, and *prays in aid* of leſſor, who joins and pleads that grantor, at the time of the grant, was *within age*; replication, maintains avowry; and traverſe that grantor, at the time of the grant, was within age, *Up.* 101.

Avowry, for *annual rent* granted *for life*, and unpaid at ſeveral days; plea, that grantor, at the time of the grant, was only ſeiſed to the uſe of his will, and that eſtate determined by his death, *Vet. Int.* 241.

Avowry, for ten pounds deviſed to defendant, with clauſe of diſtreſs; plea, confeſſes deviſe, and pleads deſcent of third part of the lands to four daughters, one of whom, with her huſband, levied a fine to uſes, and huſband, after the death of the wife, demiſed to W. for years, who *licenſed* plaintiff; replication, confeſſes fine levied and demiſed, and pleads that he took cattle levant, &c. for annual rent unpaid; and traverſes that W. poſſeſſed only a fourth part, gave licence to plaintiff to put in his cattle; demurrer, *Co.* 585.

Avowry, for *rent for eight years*, deviſed by father to four daughters by turns, iſſuing out of lands not deviſed, 1. *Br.* 261.

Avowry, by *executor* for *rent charge* granted by H. to teſtator for years, if three ſhould ſo long live, and for *rent arrear* in teſtator's lifetime; plea, that one K. being firſt ſeiſed, made a feoffment to his own uſe for life, remainder to the uſe of his will, and by will deviſed to W. in tail, remainder to J. in fee; K. died, W. died without iſſue, J. entered, and enfeoffed plaintiff; replication, confeſſion of feoffment to the uſe of his will, but ſays, remainder was limited to ſaid H. who granted, &c.; and traverſes limitation of remainder to J. 3. *Br.* 383.

That J. ſeiſed of a manor, levied a fine to his own uſe and of his wife for their lives, remainder to W. in tail, and by another fine granted lands to M. after W.'s death for life, if J. and wife ſhould ſo long live, with render of *rent charge*; W. died; avowry for rent unpaid, plaintiff confeſſes part unpaid, and to reſidue; plea, confeſſes the firſt fine levied, and pleads another fine levied to the intent to ſuffer a common recovery, and ſince ſaid fine, with tender, was levied, by which J. forfeited for life; W. died without iſſue, R. iſſ remainder in tail entered, and gave licence to plaintiff to put in cattle; replication, confeſſing the third fine, and pleads recovery according to the uſes, and ſince the ſaid fine with render levied; rejoinder, maintaining bar, and traverſes that tenants to the *præcipe* were tenants at the time of the recovery ſuffered; demurrer, 1. *Co.* 67.

That J. ſeiſed, levied a fine, with render of *rent* to *huſband and wife* and heirs of the

the husband, who devises the rent to wife in fee, from whom descended to defendant; plea, that tenements are not contained in the fine. *Her.* 663.

That J. seised, levied a fine with render of rent, with proviso, that it should not charge the person, and without clause of distress, to the intent that the grantees should pay the rent, *Her.* 667.

That J. seised, suffered a recovery to uses, with intent to grant *rent charge* to servants and friends for lives, and granted a rent to the youngest son for life; plea, an indenture to uses generally; demurrer, *Her.* 616.

Avowry, for *rent charge* granted by one in remainder in tail; plea, a fine levied, and recovery suffered by tenant in tail; demurrer, 1. *Co.* 54.

That H. seised, demised for years to J. who assigned to R. who devised to L. and made M. *executor*, and L. by consent of executor, entered and granted a *rent charge* to defendant for years, if three should so long live; plea, that since the death of K. M. claims lands as *executor*, and was possessed and made E. executor, who made F. executor, who demised to plaintiff for years; and traverse that M. entered into lands by consent of L. 3. *Br.* 325.

That J. seised, granted a *rent charge* to E. his daughter in tail, E. took husband W. who was tenant by the curtesy, and died intestate, and administration was granted, who avows for rent unpaid to W. for life; plea, *non est factum*, 3. *Br.* 339.

That P. being seised of lands, granted a *rent charge* in fee, which descended to E. who *exchanged rent* for lands with W. from whom rent descended to defendant; demurrer, *Her.* 603. *Wi. Ent* 931.

That W. seised of the manor, granted the *rent charge* to E. for life, who took to husband P. defendant; plea, that B. made plaintiff an acquittance for rent due after the time in the avowry; demurrer, *Co. Ent.* 585.

That K. seised of the manor, granted to defendant *rent charge* in tail; plea, that defendant, after the death of K. *abated* into lands, whereout, &c. *Co. Ent.* 590.

That W. seised of lands, granted *rent charge* to E. for life, who took W. to husband, who died; plea, that T. being seized of the lands, enfeoffed W. on condition that feoffment should be void on payment of ten shillings, which were paid; replication, that T. confirmed the grant, plaintiff prays to hear the deed of confirmation read; demurrer, 1. Co. 143.

Avowry, for *rent charge*, granted by J.; plea, that M. *recovered the debt in B. R.* against E. whence an *elegit* was executed of lands of J. who afterwards disseised W. and granted the rent to defendant; W. re-entered, and gave plaintiff *licence*; replication, confesses judgment, elegit, and grant by disseisin, but pleads that W. afterwards demised to defendant at will; demurrer, *Her.* 673. Avowry, *rent charge*; bar, usury, 5. *Co.* 69.

Avowry for an *annual rent* granted for life and unpaid for one year and a half ended on the feast-day, 1. *Bro.* 306. *Tho.* 276.

Similar avowry, with *nomine pœnæ*, and *rent* unpaid for ten years; plea, that grantor, at the time of the grant, was seised in fee tail, and traverses seisin in fee; demurrer, *Tho.* 269.

Avowry for *annual rent* granted in fee, to be paid at certain feast-days, and unpaid for four years, *Hanf.* 200.; bar, *non conceſſit*, *Ibid.* 205.; avowry for *annual rent* granted by father for life, and unpaid for three years at a feast-day; plea, plaintiff prays over of the deed, and demurrer, *Wi. Ent.* 865. Judgment for plaintiff, 866.

Avowry, that A. seised of the manor whereof, &c. granted an *annual rent* to T. in tail, from whom it descended to J. and from him to defendant's wife, who, in right of his wife, avows for rent unpaid for half a year; plea, protesting &c. for plea, plaintiff confesses the grant of the rent, with proviso, *that it should not charge the person*, and fine levied by tenant in tail, with intent to *extinguish* the rent, and that the manor and premises might be discharged;

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replication, proteſting, &c. for plea, that the annual rent is not comprized in the fine; demurrer, *Wi. Ent.* 820. Judgment for plaintiff, *Ibid.* 109.

Avowry, that H. ſenior, and H. junior, being ſeiſed of meſſuages, granted *rent charge* in fee, which deſcended to defendant; plea, that before H. junior, had any thing in the meſſuages, H. ſenior, levied a fine to his own uſe and his wife for their lives, remainder to H. junior, and his wife for their lives, remainder in tail, deſcent thereof to H. ſon of H. junior, who demiſed to plaintiff; demurrer ſpecial, *Wi. Ent.* 827.

Avowry, that H. ſeiſed of divers meſſuages and lands, died, they deſcended to M. and J. coheirs, who make partition of a meſſuage and lands in S.; there were allotted to J. other meſſuages, &c. to M. with ſix ſhillings and eightpence rent iſſued out of the lands and tenements allotted to J. by fealty and partition; M. died, and the rent deſcended to defendant, who avows; plea, proteſting that partition between M. and J. was not made, for plea, that H. was ſeiſed of meſſuages and lands in S. in tail, that deſcended to plaintiff; and traverſes that H. died ſeiſed in fee, *Mo. Int.* 308.

For an annual *rent* granted by E. to defendant's father and A. for their lives, for the execution of the office of overſeers; plea, that the office was not grantable by the ſtatute except to one perſon for life; demurrer, *Wi. Ent.* 927. Judgment for plaintiff.

Avowry, for annual *rent* granted by the lord of the manor for executing the office of bailiff of the manor, *Mo. Intr.* 319.

Cognizance, that W. ſeiſed of the manor whereof *locus in quo* was parcel, granted annual *rent* to R. his ſervant for life, iſſuing out of the manor, and for *rent* unpaid, &c.; plea, that R. ſeiſed of the manor, made feoffment to uſes in tail, and after divers deſcents the manor deſcended to T. in tail, when W. diſſeiſed and granted annual rent to R. T. re-entered and demiſed to plaintiff; replication, maintaining his avowry; and traverſes the diſſeiſin, and iſſue, *Mo. Intr.* 329.

Avowry, by prior, for rent iſſuing out of meſſuage by preſcription, and the uſage was to diſtrain for the ſame, *Mo. Int.* 307.

Avowry, that R. and L. ſeiſed of meſſuages and lands, granted *rent* charge to defendant's grandfather in fee, who bequeathed the rent to defendant's father, and he granted to defendant, who avows for arrears of the annuity; demurrer, 2. *Ven.* 145.

Avowry, by mayor and burgeſſes, for *rent* arrear on lands by grant made to them ſo charged, *Clif.* 642. Plea, *non conceſſit*, *Ibid.* 650.

Cognizance for taking *in alio loco* for arrears of *rent charge*, *Clift.* 644.

Plea in bar to cognizance, that J. S. did not grant to the mayor, &c. and iſſue, and further as to the reſidue, proteſting that T. T. did not hold the ſaid houſe of the ſaid mayor and burgeſſes, &c. by ſaid *rent* and fealty; for plea, that neither ſaid mayor, &c. nor his predeceſſors were ever ſeiſed within fifty years; replication, that they were ſeiſed, and iſſue, *Clif.* 651.

Count on a ſecond deliverance, avowry thereto for an *annuity*, and *nomine poenæ*, the plaintiff being tenant for years, prays in aid; plea in bar, that a ſtranger was ſeiſed of the *locus* at the time of the grant of the annuity; without this, that the grantor was, &c. *Pl. Gen.* 558.

Cognizance as bailiff to W. K. adminiſtrator of J. K. that G. G. and R. C. by indenture, after recital of a will of one W. C. grants a *rent* charge of twenty pounds annuity to T. K. and J. his wife, and the heirs of the wife, on proviſo and agreement that the *rent* ſhould be paid to them during their lives, and after their deceaſe to the uſe of the child or children of the wife then living, as ſoon as the females attain their age of eighteen, and the males twenty-one, and that if the grantees ſhould pay to them at their ſaid ages three hundred pounds equally between them, then the grant to be void, but if default, &c. ſhould be made, then they grant to the ſaid huſband and wife, and heirs of the wife, a rent charge of four pounds *per annum*; they have iſſue three ſons, the eldeſt attains his age of twenty,

twenty-one, and one hundred pounds of three hundred pounds became due, that was not paid; the baron died, and after the *feme* died, for that forty pounds of the ſaid rent of four pounds was in arrear in the life of the huſband, makes cognizance as bailiff of *adminiſtrator* of ſurvivor of the huſband, 2. *Lut.* 1151.

Cognizance as bailiff of D. W. ſeiſed in fee, &c. and grants to M. T. and his heirs an annual *rent charge* of fourteen pounds, &c. who died, and it deſcended to M. W. who covenants with ſir W. B. his couſin, to be ſeiſed to the uſe of ſir W. B. and his heirs, if the ſaid M. W. ſhould die without any child of his body, and living after his death, and died without iſſue, ſir W. B. granted the ſaid rent charge to N. W. who died ſeiſed, and it deſcended to his four ſons, the lands, &c. and the rent iſſuing out of this is of gavel kind tenure, and for the fourth part of the rent arrear cognizance is made, plaintiff demands *oyer* of the indenture of covenant of M. and W. to be ſeiſed, &c.; and demurrer to cognizance; judgment for defendant, 2. *Lut.* 1205. 1210. *Lev. Ent.* 157.

Cognizance as bailiff of R. K. *executor* of F. K. for arrear of *rent* charge granted to teſtator for his life; demurrer, 2. *Lut.* 1227.

Avowry, by deviſee of an *annuity* for term of years, where the grantee deviſes to his grantor for a certain term, by way of retainer, and after to the avowant, *Pl. Gen.* 579.

Avowry, that R. C. was ſeiſed, &c. and deviſed to T. W. in general remainder to the right heirs of deviſor, chargeable with an annual *rent charge* of fifteen pounds to E. C. and the heirs of his body, and to M. C. fifteen pounds, &c. provided that if the ſaid E. or M. ſhould die, leaving no iſſue, &c. then living, that the ſurvivor ſhall have the rent for life, both rents to be paid to the heirs of the body of ſurvivor, with clauſes of diſtreſs; E. marries T. A. they levy a fine of the firſt rent charge to the uſe of G. M. in fee, and common recovery is ſuffered, in which T. A. and wife are vouched, who vouch the common vouchee, &c. which recovery was to the uſe of the ſaid G. M. in fee, he grants to defendant, attornment, rent arrear, &c. for which avowry is made; plea, before rent arrear of the ſaid E. died without iſſue; demurrer, 2. *Lut.* 1218.

RENT ON DEMISE.

Avowry and cognizance, that *locus*, &c. is called the Water-houſe, and that the defendant J. was *poſſeſſed* of the place and other cloſes for term of eight years, and demiſe them to one W. for ſeven years, &c. rendering *rent*, and for rent arrear, &c.; plea, that from time whereof, &c. his ſervants went with cattle to London to make profit, &c. that the defendant J. making cognizance, that the cattle were the proper cattle, by the conſent of the ſaid W. the tenant granted licence to his ſervants to put them up for a night, by which, &c.; replication, that the cattle were levant and couchant, and concludes to the country; rejoinder, that the defendant J. gave licence as above, and traverſes the levancy and couchancy otherwiſe on demurrer, and judgment for defendant, 2. *Lut.* 1161.

Avowry and cognizance, that the *locus*, &c. is a cottage and garden in W. aforeſaid, that the ſaid cottage and another cottage in W. aforeſaid, from time whereof, &c. till 31ſt. Dec. Car. 1. and ſince, were parcel of the ſaid manor of W. and copyhold lands, &c. of which king James the Firſt was ſeiſed in fee, and by copy granted them to H. for ninety-nine years, rendering fourpence *per annum* at the uſual feaſts. the ſaid king, by indenture under the great ſeal, demiſes the ſaid manor to ſir F. B. and others for ninety-nine years, as by enrollment, &c. the ſurviving teſtees, grant their intereſt to W. and others, *Rex.* Car. 1. by letters-patent under the great ſeal, granted the reverſion in fee to D. and others, *but are not produced*, the grantors, by indenture enrolled, grant to W. B. the grandfather of defendant B. and to N. and L. the aſſignees of the term for ninety-nine years of the manor,

manor, who *assign* their interest to W. B. the *aiel*, N. and L. died, and W. B. survived; and the reversion in fee descended to S. his son, and from him to defendant, and he distrains for all the rent of fourpence *per annum* for fourteen years; plea, protesting that *locus*, &c. was not parcel of the manor, but confesses the indenture to sir F. B. and traverses the grant of Car. 1. to D.; judgment for plaintiff, *2. Lut.* 1165.

That the king, seised of a manor, granted it in fee to J. from whom it descended to three coheiresses on the part of the mother in default of heirs in the paternal line, who demised to plaintiff for years, rendering rent; plea in bar, that the manor descended from J. to E. in the paternal line, coheiresses demised by abatement, E. entered and demised to plaintiff, and traverses that J. died without heirs, *ex parte paternâ*, *Co. Ent.* 596.

That J. seised, demised to plaintiff for years, rendering *rent*, and reversion descended to defendant; plea, that J. after the demise, enfeoffed W. and traverses that he died seised, *2. Co.* 27.

That defendant, being seised, demised to plaintiff at will, rendering *rent*; plea that W. died seised of the lands that descended to S. defendant intruded and demised to plaintiff; S. died, and the right descended to E. who entered, before which entry no rent was in arrear; replication, that said W. enfeoffed defendant, who being seised demised to plaintiff, and traverses intrusion. *Up.* 77.

That W. and A. his wife, seised of messuages and lands by indenture, demised to plaintiff for years in reversion after their death, rendering *rent*; W. and A. entered, and reversion descended to defendant; plea, that at the time of the taking, no rent was in arrear, *3. Br.* 381.

Avowry, defendant seised of a messuage, whereof, &c. demised to plaintiff for years, rendering rent unpaid, *Ra. Ent.* 568.; plea in bar, that at the time of the taking, no rent was in arrear, *Mo. Int.* 321.

That P. seised of a close, *demised* to plaintiff for years, rendering rent, and granted reversion to defendant and wife for their lives; avowry, for rent unpaid; plea in bar, *non concessit*, and issue, *2. Bro.* 244. *Wi. Ent.* 952. Judgment for avowant, *Hob.* 128.

That J. being seised, gave lands to T. in tail general, from whom it descended to A. and B. coheirs, who demised to plaintiff for years, rendering rent; plea in bar, J. being seised, gave lands to T. and his heirs male, remainder to W. in tail; T. died without issue male, A. and B. by intrusion, demised to plaintiff, rendering rent; W. entered, and demised to defendant, and traverse the gift in tail general, *Ra. Ent.* 568.

Avowry, T. seised of manor and land, made a feoffment to use of his wife for life, remainder to K. T. died, K. took to husband S. and levied a fine to W. for years, rendering rent, and clauses of distress; *wife* and S. levied another fine to uses, W. made A. an *infant*, *executor*, and *administration durante minori ætate* was granted to K. who demised to P. and wife levied another fine to H. in fee, who made feoffment to use of defendant, who *avows* for rent reserved on the fine; plea in bar, that the wife of T. after his death, demised to F. for years, who died intestate, and administration was committed to the said K. who took said S to husband, who with the wife levied said fine with render; demurrer, *Co. Ent.* 591.

That R. seised, demised to plaintiff and others for their lives, rendering rent; reversion descended to M. who sold to defendant by indenture enrolled; bar, by confession of demise and descent; but plea, that W. levied a fine of the reversion to L. who sold to C. by indenture enrolled; demurrer, *Co Ent.* 595.

That J. with others, being seised, demised to H. for years, rendering rent, reversion descended to W. who expelled H. and afterwards being *non compos*, enfeoffed M. and others in fee, H. re-entered, and reversion descended to E. who sold to defendant, who avows for rent unpaid, *Wi. Ent.* 906.

That defendant, seised of houses and lands, whereof, &c. demised to T. for years, rendering

rendering *rent*, and avows for *rent* unpaid; plea, that R. being ſeiſed, enfeoffed H. and another to her own uſe, and M. the wife in tail, and afterwards levied a fine to defendant's father in fee, deſcent thereof to defendant; R. died, and M. the wife entered and was ſeiſed in tail, after poſſibility of iſſue extinct, and gave licence to plaintiff to put in his cattle; replication, that R. died ſeiſed defendant's father, and enfeoffed H. and another to his uſe in tail, on whom defendant's father re entered, and maintains his avowry; demurrer, *Wi. Ent.* 93

That W. ſeiſed of reverſion of lands on demiſe for years, rendering rent, levied a fine to his uſe and of his wife for their lives remainder in tail, and by another fine W. and wife granted lands to plaintiff's uſe for life of W. and after his deceaſe to the uſe of the wife, remainder to plaintiff in fee; W. died, and defendant, as bailiff to the wife, makes cognizance for rent unpaid, *Wi. Ent.* 93 ; plea, that the fine between plaintiff and W. and the wife levied, was to uſes of plaintiff in fee, to whom leſſee for years gave ſaid licence to put in his ox, and traverſes that the fine levied was to the uſes alledged in the cognizance; iſſue, and ſpecial verdict, *Wi. Ent.* 942.

That W. ſeiſed of the manor, demiſed it to S. for fifty years, and levied a fine of the fourth part of the manor to S. in fee, to whom S. attorned; F. by will deviſed the fourth part for life to C. who took defendant to huſband, remainder in tail to J who ſuffered a common recovery to defendant's uſe in fee, who *avows* for a fourth part of the rent, *Dro. R.* 421.

Avowry, for *rent* for years, where twelve year's rent is in arrear, *Mo. Ent.* 344, plea, as to part, *payment*, and traverſe that it was in arrear as to reſidue, *always ready* to pay the rent which he brings into court, *Tho.* 265.

That B. was ſeiſed, and demiſed to plaintiff for years, and traverſes that J. was ſeiſed in fee at the time of the taking, *Tho.* 266.

Plea, confeſſing demiſe to J. and deſcent to H. but ſays, that J. left the poſſeſſion of the tenements, into which H. entered, and demiſed to W.; replication, that he did not enter, *Wi. Ent.* 836.

Plea in bar, *tender* to part for reſidue, that at the time of the taking nothing was in arrear, and iſſue; demurrer to the tender, *Wi. Ent.* 876.

Avowry, damage feaſant; plea, by demiſe to J. V. and grant by J. V. to plaintiff; replication, that demiſe was with render of *rent* on demand, and re-entry for non-payment; rejoinder, that he was ready to pay, and traverſe the demand, and iſſue, 2. *Lut.* 1131.

Avowry and cognizance, for taking cattle as plaintiff had ſet out in his Count for rent arrear on the terre-tenant, and within the fee, with divers conveyances as well to plaintiff of the land as to defendant of the reverſion. *Pl. Gen.* 500.; bar, to part of cattle, that defendants did not take, as to reſidue; plaintiff, by proteſtation, denies the gift in tail; for plea ſays, that one J. before the gift alledged, was ſeiſed, and made prior gift in tail; rejoinder, maintaining cognizance made for rent arrear, and traverſes prior gift in tail, *Pl. Gen.* 502.

Avowry, for *rent* granted by fine, *Pl. Gen.* 536. Cognizance for *rent* reſerved on *demiſe* by court roll, *Clif.* 638. 640. For *rent* arrear on demiſe by indenture, 642, 645.

Avowry, that J. S. ſeiſed in fee of *locus*, &c. by leaſe and releaſe conveyed to the uſe of A. wife of ſir H. W. for life, the death of ſir H. and that after his death demiſe to plaintiff, rendering *rent* which is in arrear; bar, that P. lord W. was ſeiſed in fee, &c. that he deviſed it to P. B. his ſecond ſon, in tail male, to ho ſince the death of S. counteſs of K remainder to the right heirs of the earl, death of the earl and counteſs, entry of P. B. his death and deſcent to K. ſon and heir, deſcent from him to N. his brother and heir, and that he was ſe until diſſeiſed by the ſaid R. F. and being ſeiſed by diſſeiſin, made the leaſe releaſe; replication, that before the ſaid J. F. had any thing, &c. the ſaid ſir H. W. was ſeiſed in fee, &c. and enfeoffed the ſaid J. F. and one M. in fee, and

continuance of the poſſeſſion and ſeiſin for twenty years and more under the aforeſaid title, by which the entry of the ſaid P. was barred, and traverſes the ſeiſin of P. by J. H. 2. *Lut.* 1199.

Avowry, made by ſurviving *executor for rent on leaſe* ſo long as three ſhould live; bar, proteſting that teſtator did not grant, but ſays that the *executor* who died granted to A. D. by deed, who gave him licence, &c.; the avowant makes default, and writ of enquiry awarded, *Thel. Bre.* 150.

Replevin againſt two, the one appearing, the other *after the laſt continuance* died; no proceſs awarded againſt him, the party appearing avows for rent arrear, *Clif. B.* 653.

That E. ſeiſed in fee demiſed to B. for ſeventy years, who demiſed to F. for thirty years, rendering *rent*; F. built a mill, and made J. his wife *executrix*; B. granted reverſion of rent to H. who granted to S. who made E. his wife his *executrix*, who aſſigned to defendant; plea, that before the demiſe G. agreed to ſtand ſeiſed to his own uſe and of his wife for their lives; remainder in tail, and after demiſed to B. &c. and died; M. entered, and traverſes that G. at the time of the demiſe was ſeiſed in fee, 3. *Br.* 389.

That W. ſeiſed, demiſed to plaintiff and wife for their lives, rendering *rent*, and granted reverſion to uſes, which deſcended to co-heireſſes, one of whom releaſed to plaintiff *per quod*; part of rent is extinguiſhed, and defendant avows for reſidue; plea, that W. died ſeiſed of reverſion, that deſcended to M. &c. and traverſes grant of the reverſion, *Her.* 632.

That J. ſeiſed of lands held by knight ſervice, demiſed to plaintiff for years, rendering *rent*, and deviſed two parts of the rent to K. his wife for life; reverſion and third part of the rent deſcended to M. and J.; M. died, and his part deſcended to J. who avows for third part of the rent, *Her.* 658.

That A. ſeiſed of a manor, demiſed to J. for years, rendering ten pounds and ten quarters of wheat between certain feaſt-days; J. made A. executrix, who took plaintiff to huſband, and avows for five quarters, parcel of the rent, *Vet. Int.* 233.

For *rent* arrear for three years, and defendant avows for rent of two years, *Up.* 105.

That S. defendant's father being ſeiſed, demiſed to A. for life, remainder to plaintiff for life, rendering *rent*; reverſion deſcended to defendant, who avows for rent, *Her.* 636.

That W. ſeiſed, demiſed for years to J. rendering rent; J. aſſigned to F. who made plaintiff executor, and reverſion deſcended to K. who ſold to defendant by indenture enrolled, *Her.* 637.

That N. being ſeiſed, gave in tail to D. rendering *rent*; reverſion deſcended to R. who granted to G. from whom it deſcended to defendant; plea, confeſſing the gift in tail, but pleads deſcent of lands to W. who levied a fine to S. who made a feoffment to the uſe of plaintiff, who ſeiſed, and traverſes that reverſion deſcended to defendant, *Aſh.* 398.

That W. ſeiſed, demiſed to defendant for years, and defendant demiſed to plaintiff for years, rendering rent; plea, that before the rent due defendant entered, and expelled plaintiff; replication, did not expel, *Aſh.* 411.

That defendant ſeiſed, demiſed to plaintiff for years, rendering *rent*; plea, that at the time of the taking there was no rent in arrear, *Aſh.* 413.

That defendant's father being ſeiſed, demiſed to K. for lives determinable on three lives, rendering *rent*; reverſion deſcends to defendant, who avows for rent unpaid, *Tha.* 264. Of a third part of lands, avowry; plea, that W. ſeiſed of two other third parts, gave licence to plaintiff to put in his cattle; demurrer, 2. *Ven.* 225.

That R. ſeiſed, demiſed to J. for years, rendering *rent*; reverſion deſcended to H. and defendant makes cognizance as bailiff, *Wi. Ent.* 836.

That defendant ſeiſed of lands for life, demiſed to plaintiff for years if defendant ſhould

ſhould ſo long live, rendering *rent*, and avows for rent unpaid; plea, by plaintiff after over of demiſe; demurrer, and judgment for defendant, *Wi. Ent.* 868.

That E. ſeiſed of houſes and lands, demiſed to plaintiff for life, rendering *rent*, reverſion deſcended to defendant, who avows for rent unpaid, *Wi. Ent.* 875.

That G. ſeiſed of houſes and lands, demiſed to W. and A. his wife for their lives rendering to whom (the wife) W. attorned; W. and wife died, plaintiff entered; and reverſion deſcended to R. who by indenture enrolled ſold to defendant, *Wi. Ent.* 849.

That P. ſeiſed of lands, demiſed to plaintiff and others, rendering *rent*; P. levied a fine to his own uſe and of the wife for their lives, remainder in tail, and died; wife took G. to huſband, and defendant makes cognizance as their bailiff, *Wi. Ent.* 826.

That E. ſeiſed of a parcel of land lately encloſed upon which was a ſtable newly built, demiſed for years, rendering rent; reverſion deſcended to H. who ſold to defendant by indenture enrolled, *Wi. Ent.* 870.

That mayor, bailiffs, &c. of city of C. being ſeiſed of lands, demiſed to T. for years, who aſſigned to defendant, who demiſed part thereof to plaintiff, rendering rent, and defendant avows for *rent*; plea in bar, *non dimiſit*, and iſſue, 2. *San.* 310.; judgment for plaintiff on verdict affirmed on writ of error in B. R.

That J. being ſeiſed of lands, demiſed to B. for life, remainder to plaintiff for ninety nine years, if two ſhould ſo long live, rendering rent; J. and B. died, plaintiff entered, and reverſion deſcended to four daughters and two couſins, one of whom ſold her part to defendant, who avows for ſixth part of rent unpaid, *Wi. Ent.* 895.

Cognizance as bailiffs to a perſon who died ſince the laſt continuance for *rent* reſerved on owelty of partition between co-heirs; plea, proteſting no partition; for plea, that the anceſtor was ſeiſed for life, remainder to plaintiff in tail; *abſque hoc*, that anceſtor was ſeiſed in fee, *Pl. Gen.* 508.; iſſue on the traverſe, 512; joinder in aid by ſummons to aid', and two of the prayees plead *hors de ſon fee*, and the other diſclaims; rejoinder within fee and iſſue, and *taxatio damp.* on the diſclaimer till iſſue tried, *Pl. Gen.* 512.

Avowry for *rent*, that plaintiff is his tenant by copy; bar, *confirmation* by defendant to plaintiff and his heirs ſince *demiſe* by copy, and iſſue, *Pl. Gen.* 553.

Avowry by *baron and feme* in right of his *wife*, and cognizance by another as bailiff to them, as guardians in ſocage for rent arrear; plea, grant of the wardſhip of the wife while ſole to H. B. to whom he paid the rent; replication, maintaining the plea, and traverſes the grant made to H.; rejoinder, and iſſue on the grant, *Pl. Gen.* 564.

Cognizance for damage feaſant by re-entry on the plaintiff being leſſee for years for *rent* arrear; plaintiff maintains demiſe, and traverſes the demand, *Pl. Gen.* 570.

Cognizance made as bailiff to a copyholder for *rent* reſerved on a leaſe to plaintiff; plea, that the plaintiff had licence by one who had title of the king, who had it by diſſolution, and traverſes the leaſe being made to him, *Pl. Gen.* 591.

Avowry, that the *locus*, &c. contains a houſe in the pariſh of C. and avows for *rent* reſerved on a *leaſe* made by him to J. P.; demurrer; avowry bad, for that the place of the taking in the count was not traverſed, 2. *Lut.* 1147.

Avowry according to the ſtature 32. Hen. 8. for rent by *executors*, *Clif.* 646.

Cognizance as bailiffs of the dean and chapter of the cathedral in the city of C. for rent arrear on a demiſe made of *locus*, &c. by letters patent, *Clif.* 647.

Plea, confeſſion of ſeiſin in P. and *demiſe*, rendering *rent* thereout to P. and the heirs of his body, who died without heirs, and traverſes that the rent reſerved was as ſet out in the cognizance; demurrer ſpecial, *Wi. Ent.* 829.

Plea, that the ſtable was parcel of a common inn in which plaintiff as a gueſt was lodging, and the horſe was feeding; judgment if he ought to take the horſe; demurrer, *Ibid.* 872.

Plea, that the daughter who ſold when ſole made an indenture to uſes in tail, with

proviſo, that if ſhe or any iſſue in tail ſhould attempt to diſcontinue the entail, the eſtate of ſuch perſon ſhould ceaſe, and the next uſe ſhould take place; the daughter took *huſband*, and with him levied a fine, and the eſtate came to the wife of plaintiff. the next uſe, who put in the cattle; demurrer, *Wi. Ent.* 896.

Plea, after confeſſion of the declaration and inſanity of W. but that W. when *compos mentis* enfeoffed M. and others, on whom H. re-entered and aſſigned to plaintiff, who put in his cattle, and traverſe that W. at the time of executing the feoffment was *non compos mentis*, and iſſue, *Wi. Ent.* 907.

That before re entry nothing was in arrear, *Mo. Int.* 302.

On a demiſe made by the avowant; plea, that avowant did not demiſe on the ſaid firſt day of November, &c. but held bad, for that the firſt day is not traverſable, 2. *Sau.* 314.

Plea, that T. did not demiſe to P. tenant aforeſaid, *modo et forma*, and iſſue, *Cliff.* 641.

Avowry for cattle in the declaration and other cattle replevied for rent in arrear on demiſe of a houſe in right of the wife, *Wi. Ent.* 643.

Plea in bar, nothing in arrear to part; to the other part, *tender* before diſtreſs, and no demand made afterwards, *Cit.* 646, 653. Replication, iſſue on tender, 654.

Cognizance as bailiffs of R. M ſince ſeveral deſcents by fine for *rent* arrear; plea confeſſes ſeiſin in fee of S. M. but ſays that before the making the indenture aforeſaid S. made feoffment to the uſe of ſaid R M. for his life if the ſaid S. ſhould ſo long live; and that if he died in the lifetime of the ſaid R. then to the uſe of the ſaid R. M. and his heirs during the life of the ſaid Robert, and ſo long as the ſaid Robert had heirs of his body; that Robert was ſeiſed, and S. died in the lifetime of Robert, and that Richard entered, and was ſeiſed, and made the demiſe in the cognizance, and after granted the reverſion to one T. M in fee, and that plaintiff attorned to him, and traverſe that the ſaid S. M. was ſeiſed in fee at the time of the fine levied, *modo et forma*, &c. and iſſue; verdict and judgment for plaintiff, 2. *Lut.* 1608.

Avowry, that H. in his lifetime enfeoffed R. in fee, who demiſed to plaintiff; defendant took plough and hay *de injuria ſua propria*, and traverſe that lands after the death of H. deſcended to J.; demurrer, *Wi. Ent.* 841.

That J. ſeiſed, demiſed to plaintiff for years, of whom plaintiff prays in aid; and J. being ſummoned, comes and joins plaintiff, who pleads that J. held lands of defendant by fealty and rent of nine ſhillings and ſuit of court for all ſervices, and traverſes that he held lands as in the cognizance alledged, demurrer, *Wi. Ent.* 863.

Avowry, plaintiff confeſſes and further pleads that T. enfeoffed plaintiff, who at a day certain upon the tenements was ready and offered to pay annual rent, and no perſon was there on the part of defendant to receive it, replication, proteſting that he did not offer; for plea, that defendant after the day on a parcel of the tenements demanded the rent, and neither the plaintiff nor any one for him paid or offered to pay; judgment for avowant, *Wi. Ent.* 919. *Hob.* 207.

Plea, proteſting that A. did not hold the manor by ſuch *ſervices*; for plea, that neither defendant's father or his anceſtors were ſeiſed of the ſame ſervices; demurrer, *Wi. Ent.* 926.

Plea in bar, confeſſing T. was ſeiſed and held by ſervices alledged, and traverſes that *locus* was parcel of thoſe tenements, and like plea to avowry for rent unpaid, *Wi. Ent.* 930.

Plea, confeſſing that E. was ſeiſed and held by *rent* and *ſervice*, which he paid and performed, and traverſe that he held by ſuch ſervice as in the avowry ſtated, *Bro. R.* 410.

Plea to avowry, nothing in arrear; without this, that he was ſeiſed of parcel of the ſervices, and iſſue on the ſeiſin, *Pl Gen.* 273.

Plea in bar, that W. did not die in the *homage* after eſſoign in aid; prayer; *Mo. Int.*

Avowry, that plaintiff holds croft of land whereof, &c. by fealty and rent, and [illegible] for *rent*, *Ra. Ent.* 224.

That defendant and *wife* held of defendant as of his manor eight acres, whereof &c. by *homage*, fealty, fcutage, rent, and fuit of court from defendant [illegible] by the hands of husband and wife, which eftate, &c. and avows for the rent, *Ra. Ent.* 554.

That T. held of defendant a prior as of his manor, the lands by fealty and *rent*, and avows for *rent*, *Ra. Ent.* 555. *Vet. Int.* 234, 244.

Traverfe of *locus* &c. and for return avows that J. held the lands of P. as of the manor; by certain fervices manor defcended to W. from him to defendant, and plaintiff has the eftate J. had in the lands, *Ra. Ent.* 555.

That W. was feifed of ten acres of land whereof, &c. held of R. as of the manor by fealty and rent, which eftate plaintiff has; manor defcended to C. from him to J. who enfeoffed B. who demifed for life, remainder in tail to defendant, who avows for *rent*; plea in bar *de injuria propria*, and traverfes that *locus*, &c. is parcel of the lands held by defendant, *Ra. Ent.* 556. *Vet. Int.* 93.

That T. was feifed of half a yard land held by the bifhop, which eftate, &c. avows for *rent*, *Ra. Ent.* 557. That T. was feifed of feven acres of land held of defendant as of the manor, which eftate, &c. and avows for rent, *Ra. Ent.* 565.

That *husband* and *wife* were feifed of the manor, and W. feifed of lands whereof &c. held of the manor, que eftate, and avows for rent, *Ra. Ent.* 565.

That W. and A. his *wife* were feifed of lands held of R as of the manor by homage, fealty, fcutage, rent, and fuit of court, whereof R. was feifed by hands of A. whilft fole, the manor *inter alia* defcended to H. within age, and feifed into the hands of the king, who affigned to defendant, a widow, the *rent inter alia* for dower and for rent; fhe avows, *Ra. Ent.* 556.

Avowry, that W. feifed of lands whereof, &c. held of the manor whereof H. being feifed, gave it to A. and E. his wife in tail, W. gave lands to plaintiff and wife in tail, manor defcended to defendant, who avows for *rent*, *Ra. Ent.* 574. *Vet. Int.* 91. That R. was feifed of lands and houfes whereof, &c. held of prior defendant *que eftate*, and avows for rent, *Ra. Ent.* 574.

That abbot held two crofts of land whereof, &c. of defendant as of manor, and avows for *rent*, *Ra. Ent.* 574.

That J. feifed of lands whereof, &c. held of A. by fealty, rent, and fuit of court of the manor, *fervices* defcended to defendant, and lands defcended to three daughters, who gave them to plaintiff, *Ra. Ent.* 575.

That plaintiff was feifed of lands held by certain fervices of W. as of the manor; W. enfeoffed defendant of his manor, to which plaintiff attorns, and avows for rent; plea in bar, that he held lands of the bifhop by certain *fervices*, and traverfes attornment to the feoffment, 9. *Co.* 83.

That defendant's father was feifed of the manor, and T. was feifed of the lands held of him by certain *fervices que eftate*, manor defcended to defendant, who avows for *rent* and *fuit* of court, *Ra. Ent.* 224. *Vet. Int.* 151.

That T. was feifed of a croft held of N. by homage, fealty, fcutage, and rent; fervices defcended to defendant, and plaintiff has the eftate of T. in part of the land, and avows for rent of twenty *uiforum*, and homage and fealty, *Ra. Ent.* 556, *Vet. Int.* 92.

That plaintiff's father was feifed of lands held of defendant's manor by homage, fealty, rent, fuit of court, and heriot; lands defcended to plaintiff, and avows for *homage*, *fealty*, and *rent*, *Co. Ent.* 598.

That late maiter of a hofpital was feifed of lands held of J. as of the manor; J. demifed the manor to W. who made defendant executor, who avows for rent, *Vet. Int.* 234

Cognizance as bailiff of T. M. and that G. lord C. was feifed of, &c. and held of the faid T. M. as of his manor, &c. by fealty and rent of three pounds eight fhillings and eightpence, &c.; that premifes defcended to J. lord C. as fon, and

makes cognizance for three pounds three ſhillings and threepence for *rent* arrear, and for other three pounds eight ſhillings and eightpence for relief after the death of G. lord C.; plea in bar as to rent, tender, and refuſal, and as to relief, demurrer, that it does not appear that the ſaid T. M. had title to have the relief aforeſaid, and judgment for the cognizance, 3. *Lev.* 141.

Cognizance as bailiff to W. M. that H. T. was ſeiſed in fee of a meſſuage held of W. M. of his manor of M. by fealty four pounds rent and ſuit of court, and makes cognizance for the *rent* arrear and ſuit of court unpaid; plea in bar, for that the plaintiff confeſſes a tenure by the rent of four pounds only, and traverſes the tenure alledged in the cognizance; replication, and iſſue on the traverſe; judgment for defendant, 2. *Lut.* 1211.

Avowry as to taking of cattle for *cuſtoms* and ſervices at one place, and *non cepit* pleaded as to another place; and after verdict, judgment for the avowant, *Thſ. Br.* 121.

That C. ſeiſed of the manor of H. held of P. of the manor of W. by fealty and thirteen pounds rent, enfeoffed J. of one parcel, T. of another parcel, and A. of the reſidue, that deſcended to E.; P. had notice of the ſeveral feoffments, and received ſeven pounds ten ſhillings rent for E.'s part only, which eſtate J. and H. have from P.; E. demiſed to plaintiff, who *tendered* the rent; replication, that P. had no notice, nor received the rent; and for plea, that E.'s part in the manor was of the annual value of ſeven pounds ten ſhillings only; demurrer, *Wi. Ent.* 824.

Plea, proteſting that J. did not hold by *ſervice* in the cognizance alledged, defendant was not ſeiſed of the rent within fifty years, *Mo. Int.* 322. Without proteſtation, *Ibid*, 300.

Avowry, that plaintiff is ſeiſed of lands held of defendant by *fealty*, *rent*, and ſeveral ſervices of huſbandry, for rent and other ſervices for two years, *Tho.* 271. *Mo. Int.* 318.

Traverſe of *locus* and *for return* that plaintiff ſeiſed of lands held them of H. as of the manor by fealty, rent, and ſuit of court, from whom defendant was ſeiſed by the hands of plaintiff, and defendant as bailiff of H. makes cognizance for rent arrear, *Tho.* 274.

Cognizance, that E. ſeiſed of the manor of K. held of J. and H. as of the manor of W. by *fealty* and *rent*, from whom J. and H. were ſeiſed by the hands of B. and defendant as bailiff makes cognizance for rent unpaid, *Wi. Ent.* 823.

Cognizance, H. ſeiſed of lands held them of W. by fealty, rent, and ſuit of court; lands deſcended to J. and defendant as bailiff took plough and hay for *fealty* unperformed, and *relief* unpaid, *Wi. Ent.* 850. *Mo. Int.* 344. For *relief* only, 328.

Avowry, that plaintiff ſeiſed of the manor of C. held of defendant as of his manor by *homage*, *fealty*, *ſuitage*, and rent, of which rent defendant was ſeiſed by hands of plaintiff for homage unperformed; ſpecial demurrer, *Wi. Ent.* 859. *Wi. Rep.* 31.

That J. was ſeiſed of lands held of defendant as of the manor by *fealty*, *rent*, and *ſuit of court*, whereof defendant was ſeiſed by hands of J. and avows for rent unpaid, *Wi. Ent.* 863.

That T. ſeiſed of lands, held them of G. H. as of the manor of L. by *fealty* and rent, of which the queen was ſeiſed by the hands of T.; manor deſcended to King James, who ſold to G. who ſold to defendant, who avows for *rent* unpaid, *Wi. Ent.* 918, 930. Similar avowry by ſuit of court unperformed, *Wi. Ent.* 929.

That T. was ſeiſed of the manor of M. and A. was ſeiſed of the manor of H. held to T. by fealty and rent, whereof T. was ſeiſed by the hands of A. then tenant; manor of M. deſcended to defendant, who avows for fealty unperformed, *Wi. Ent.* 944.

Avowry, that E. was ſeiſed of lands held of defendant as of the manor by *fealty*, *rent*,

rent, and other *services*, of which defendant was seised by the hands of E. and unpaid, and for other services unperformed, *Br. R.* 416

Avowry, H. seised of mano whereof, &c. granted to plaintiff in fee to hold by knight service and annual rent; the manor descended to E. 6. and from him to Queen Mary, who granted the *services* and *rents* to defendant, who avows for rent unpaid; plaintiff *n l pros*; judgment, *Mo. Int.* 324.

Avowry, father held lands of defendant by fealty, suit of court, and *heriot*; avows for the heriot, *Mo. Int.* 306. Avowry for *heriot* service, *Tho.* 267.

Cognizance by bailiff of governor of Charter House, in the county of Middlesex for *rent* arrear, *Clif.* 637. Plea, that J. B. did not hold the manor of B. of the said governor by service and rent aforesaid, *Mo. Int.* 638.

Avowry, R. seised of lands which he held of O. as of the manor of N. by fealty, rent, and suit of court, of which O. was seised by hands of R. the manor descended to S. who sold to defendant by indenture enrolled, who avows for rent unpaid; bar, protesting that cognizance was not true; plea, that O. never was seised of services aforesaid by the hands of R. and issue, *Mo. Int.* 338.

That Hen. 6. seised of an *annual rent* of twelve pounds issuing out of the manor H. granted ten marks thereof to the lord T. with power of distress as the king could by act of parliament, the rent by divers descents and grants came to defendant; plea, that lands in which, &c. were copyhold, and queen Elizabeth seised the manor, granted lands to K. from whom they descended to plaintiff, who in his cattle; demurrer and plea held bad, *Wi. Ent* 915.

Avowry for annual rent granted to chancellor, masters, and scholars of the university of Oxford, with clause of distress, *Tho.* 273.

Avowry, that C. seised of the honor, castle, and manor whereof, &c granted *rent charge* to D. of H. in fee, which came to queen Elizabeth by attainder, and from to *Jac.* 1. who granted to H. from whom it descended to T. who granted to defendant; plea, that H. seised in *locus* enfeoffed W. and E. his wife in fee; W. died and survived, who demised to plaintiff, who prays in aid of her, who joins, protesting that *locus in quo* was not parcel of the honor and manor at the time of the grant of the annual grant; for plea (same plea), traversing that T. did not grant to defendant, *Wi. Ent.* 841.

That R. seised of lands, devised *rent charge* with clause of distress and *avowry* for rent unpaid; plea confesses devise, and pleads that a *third* part of lands descended to *four* daughters, one of whom died, and her purparty, which was a *twelfth* part, descended to B. who enfeoffed W. who demised to plaintiff; replication, confessing descent and enfeoffment; pleads that P. seised of the other *two* parts, enfeoffed W. of them, who devised to plaintiff as well the two parts as the twelfth part, and traverses that plaintiff was possessed of twelfth part only; special demurrer, *Wi. Ent.* 889. Judgment for defendant, *Hob.* 80. 8. *Co.* 83.

That J. seised of lands, granted a *rent* charge to S. in tail, with clause of distress, S. made M. *executor*, who made avowant *executor*, and defendant as his bailiff makes cognizance for rent unpaid in the lifetime of S.; plea, that before J. had any thing A. seised of lands held *in capite*, demised to H. for years, and granted the reversion to J. in fee, to whom H. attorned; then J. granted the rent to S. reversion descended to C. in the custody of the queen, who demised the reversion to R. S. died, and the term expired; R. made W. executor, who demised to plaintiff; demurrer, *Wi. Ent.* 901.

Avowry, that *Car.* 1. seised of the manor, &c. demised *locus in quo*, part thereof, to G. for years, who granted an annual *rent* during the term to defendant who avows for rent unpaid; plea, that certain persons, sitting as lords of parliament, ordered that the indenture of demise made to G. should be cancelled, and their proceedings were made valid by act of oblivion; demurrer, *1. Sand.* 158 Judgment for defendant, 194.

Avowry in right of *wife* for annual *rent* deviſed to her *ſole* for life by the laſt will of [illegible], with clauſe of diſtreſs; demurrer, 1. *San.* 195. Judgment for defendant.
Avowry for annual rent iſſuing out of the manor whereof H. granted to defendant for life by R.; plea, that one E. before ſeiſed, by will deviſed two parts of the manor of R. for life, remainder in tail to J.; R. died, and J. entered and demiſed to plaintiff, and traverſes that R. at the time of the grant was ſeiſed in fee, *Br.* 419.
Avowry for annual *rent* granted to defendant for ſervices done; plea, that plaintiff requeſted defendant to ſerve, and defendant refuſed, *Mo. Int.* 381.
That J. ſeiſed of lands held of defendant by homage, fealty, rent, &c. enfeoffed M. who deviſed two parts to W. in fee, and avows for homage, fealty, and two parts of rent; aid; prayer, *Br.* 308.
Avowry for *caſtle-ward*; bar, that caſtle is deſtroyed; demurrer, 4. *Co.* 88. *Mod.* 1.
Avowry for eleven pounds *rent*, and money aſſeſſed for a *talliage* at defendant's will; bar, that he holds by *certain ſervice*, and nothing in arrear.
Avowry to an old ancient count, and iſſue on the *ſervices*, 2. *Inſt.* 9.
That plaintiff prior was ſeiſed of lands held of defendant, an abbot, by fealty and ſuit of court, and that every tenant of the prior ſhould put his beaſts into the fold of the abbot, plough the lands, and meaſure the corn, and that prior ſhould be amerced and diſtrained upon for not doing ſuit of court, and avows for twice omitting to do ſuit, and not putting ſheep into the fold, *Ra. Ent.* 573.
That plaintiff is ſeiſed of lands held of defendant by fealty, rent, and divers ſervices, and avows for rent and divers ſervices for two years, *Ra. Ent.* 575. *Upp.* 90.
That plaintiff holds houſes, mill, and lands called, &c. lately of one W. in ſeveral vills whereof, &c. of defendant as of the manor, who avows for rent and ſuit of court, *Ra. Ent.* 575.
That A. was ſeiſed of lands whereof, &c. held of L. as of the manor by fealty, rent, and ſuit of court, *que eſtate*, manor and ſervices deſcended to defendant, who avows the taking of one horſe for rent, and of another horſe for fealty, *Ra. Ent.* 576. *Vet. Int.* 92.
That R. was ſeiſed of lands held of J. as of the manor; J. enfeoffed W. of the manor, which deſcended to defendant *que eſtate* in the lands, and avows for not ploughing land and cutting corn, *Co. Ent.* 599.
Avowry for fealty and relief, *Reg. Jud.* 78.
That plaintiff held lands of J. as of the manor by ſeveral ſervices; J. enfeoffed defendant of the manor, to which plaintiff attorns, and defendant avows taking one beaſt for homage, another for fealty, and another for caſtleward, fine of the wapentake, and *ſheriff's aid*. *H.* 3. *E.* 3, 10.
That plaintiff held of C. as of the manor by certain ſervices, manor deſcended to defendant, who avows for homage, ſuit of court, and rent; bar, defendant's great grandfather granted lands to the grandfather of defendant in frank marriage; replication, that he was ſeiſed of the ſervices, *P.* 10. *E.* 3, 45.
That J. held land of defendant as of the manor by fealty, rent, two days labour, ſuit to his mill, and ſuit of court; lands deſcended to the daughter who took plaintiff to huſband, and avows for two days labour and ſuit at the mill; bar by title by deſcent, and traverſes the tenure, 1. *Br.* 17.
That N was ſeiſed of lands held of R. by certain ſervices whereof, &c. ſervices deſcended to defendant, who hath the eſtate in the lands, and avows for the homage and rent; bar after aid prays that he holds by other ſervices. *Upp* 84.
That R. was ſeiſed of four houſes and lands held of E. as of the manor by homage, fealty, ſcutage, rent twelve pounds and pound of pepper, ſuit of court, and four heriots; manor deſcended to T. who ſold to defendant by indenture enrolled, who hath the eſtate in the lands, and avows for homage, fealty, and ſuit of court, 2. *Br.* 213.
That J. was ſeiſed of manor of W. held of the king's manor by homage, fealty, ſcutage,

ſcutage, rent, and ſuit of court; king granted to R. in tail, remainder in tail to N. from whom it deſcended to defendant, who avows for two reliefs, homage, and fealty, ſuit at different courts, and aid for the daughter's marriage, *Her.* 630.

That H. ſeiſed of moiety of lands held by fealty, rent, ſuit of court, and heriot to defendant's manor, died poſſeſſed of the beaſt taken for an heriot, &c.; bar, proteſting that he was not ſeiſed of the ſervices; plea, that H. held moiety of K. of the other manor, by fealty and rent; and traverſes defendant's tenure, 3. *Br.* 396.

Avowry, of taking three cattle, oxen, ſeverally, for ſeveral cuſtomary heriots, for ſeveral lands held of defendant in right of his wife; bar, as to one, proteſting, &c. cognizance; plea, *de injuria propria*; traverſing that he held lands of defendant *modo et forma* as to the other beaſt; proteſting, as before; plea, *de injuria*, &c.; and traverſes the cuſtom of heriot, and ſo of the third, 3. *Br.* 313.

That T. ſeiſed of houſes and lands, whereof, &c. held of queen Elizabeth by fealty, rent, ſuit of court, and heriot; manor deſcended to king James, who granted to D. who ſold to defendant by indenture enrolled, and avows for heriot on the death of the tenant; bar, that T. held lands of the queen by fealty and rent; and traverſes the tenure by *ſervices* alledged, *Her.* 604.

That W. ſeiſed of lands, held of defendant as of the manor, by fealty, ſuit of court, eight pounds rent, and, after the death of each tenant, a *horſe* with *bridle*, &c.; W. died, and defendant avows for *horſe*, &c. 3. *Br.* 349.

Avowry, on ſeveral takings, for *inclosing Biſhop's Park* unperformed, and the *aid* on creation of the biſhop unpaid, *Her.* 628.

Avowry, by executors of H. of whom W. held lands by certain *ſervices*, that lands deſcended to coheireſſes for *rent* due to H. after death of W. *Her.* 669.

Avowry, by tenant in tail by fine, and render for *rent of ſervice* due by prior, *Upt.* 93.

Avowry, on tenure of manor by fealty, rent, and ſuit of court, 3. *Br.* 273.

That plaintiff was ſeiſed of lands held of manor of defendant by fealty, rent three ſhillings and fourpence, and one *pair of gold ſpurs*, and ſuit of court and avowry for ſix ſhillings and eightpence rent, 3. *Br.* 332.

That H. held lands of W. by fealty, rent, &c. W. enfeoffed defendant of the manor, and plaintiff ſeiſed of the lands attorned; plea, that he was ſeiſed of lands held by fealty only, and traverſes attornment; ſpecial verdict, that he was within age at the time of the feoffment, *Her.* 631.

That R. was ſeiſed of lands held by fealty, homage, ſcutage, &c. manor deſcended to defendant, who avows for homage, 4. *Co.* 6.

That plaintiff's grandfather held the manor of R. by homage, &c. manor deſcended to the daughters, and afterwards *ſervices were charged* by indenture, and for that different ſervices were unperformed, defendant avows for homage, P. 10. E. 3. 41.; ſimilar avowry for part of ſervices, M. 5. E. 3. 3.

Avowry, proteſting that all the rents and ſervices are in arrear, and rent unpaid for ſix years, *Ra. Ent.* 576.

Plea of diſclaimer by plaintiff to hold of defendant, and judgment for plaintiff, *Ra. Ent.* 224 561. Similar plea by plaintiff, aid, prayer, *Ra. Ent.* 225., Replication, that J. after the laſt continuance, diſſeiſed plaintiff, and he is tenant; rejoinder, that whoever prays in aid is tenant, *Ra. Ent.* 561. *Vet. Int.* 91.

Bar, proteſting that he was not ſeiſed of the ſervices; plea, that he did not hold *modo et forma*; repleader awarded, and plea *hors de ſon fee*, 3. *Br.* 329. That *locus*, &c. is out of his freehold; replication, that it is within, &c. *Ra. Ent.* 565. *Upt.* 83. 97.; and replication, that it is within the freehold, and not out of it, *Ra. Ent.* 566.

Plaintiff prays in aid of leſſor, *Co. Ent.* 574. 598.

Plaintiff plead that he holds the lands jointly with his wife by gift in tail, and prays in aid of his wife, *Ra. Ent.* 574. *Vet. Int.* 91.

Plea, in bar, proteſting that A. never was ſeiſed of ſuit of court, for plea, that he held of A. by fealty and rent, and A. granted the rent and ſervices to W. in fee; replicat on, maintaining the avowry, and traverſes the grant, *Ra. Ent.* 575.

Avowry, for ſervices; bar, that he took the cattle, *de injuria*, &c.; and traverſes that *locus*, &c. is parcel of ten acres held of defendant, *Ra. Ent.* 556. *Vet. Int.* 93.

That he held lands as of the manor of M. and traverſes that he held of defendant as of the manor of S. *Ra. Ent.* 573.

Traverſe of *locus*, and *for return* avows that J. ſeiſed of the houſes held of the prior, defendant's predeceſſor, by homage, fealty, and ſuit of court. lands deſcended to W. and from him to plaintiff, and avows for *relief* unpaid, and homage and fealty unperformed, *Ra. Ent.* 555. *Vet. Int.* 92.

That plaintiff held lands of defendant as of the manor, by certain ſervices whereof defendant's grandfather was ſeiſed by hands of L. then tenant *que eſtate*, manor and ſervices deſcend to defendant, who avows for homage and ſuit of court, *Ra. Ent.* 565. *Upp.* 83.

Avowry, taking horſe for homage and fealty unperformed, and ſheep for fifty ſhillings, for *relief unpaid*, *Ra. Ent.* 570.

That plaintiff was ſeiſed of lands held of defendant and others, as of the manor, by homage, fealty, ſcutage, ſuit of court, annual rent, and rent of two ſhillings and ſixpence for a fine of which twenty-four weeks for Caſtlegard, by which rent of two ſhillings and ſixpence defendant hold the ſame tenements of the ſaid caſtle, of which *ſervices* (except homage and fealty) defendant and others were ſeiſed by hands of plaintiff, and avows for rent of fourteen ſhillings and rent of two ſhillings and ſixpence unpaid, and homage and fealty unperformed, *Ra. Ent.* 566. *Upp.* 96.

Plea, that he holds by fealty and rent of four ſhillings, of which nothing is in arrear, and that defendant levied rent of ſix ſhillings for divers diſtreſſes, and traverſes that he was ſeiſed thereof by plaintiff's hands, *Ra. Ent.* 577. *Vet. Int.* 92.

Bar, proteſting that the father did not hold by ſervice alleged, plea, that defendant was not ſeiſed of ſervices, 4. *Co.* 6. *Upp.* 95. *Ajb.* 415. When within forty years, 1. *Co.* 64.

Avowry by feoffee of manor; bar, that plaintiff ſome time held of feoffor, who before feoffment granted plaintiff's *ſervices* to A. to whom he attorned, and traverſes attornment to the feoffment, *H.* 3. *E.* 3. 10.

That plaintiff holds of defendant by fealty, rent twelvepence, and ſuit of court, and traverſes tenure by the ſervices alledged, *Co. Ent.* 598. *Upp.* 84, 85. 91. 3. *Br.* 349. 273. 333.

That he holds the manor by ſervice of ſixpence or a pair of gold ſpurs, and traverſes ſeiſin of the homage; demurrer, *P.* 10. *E.* 3. 41.

That H. ſeiſed of the manor and lands before the ſtatute of *Quia Emptores*, enfeoffed S. of the lands to hold by fealty and rent of one pair of ſpurs, which eſtate in the manor, &c. and in the lands, &c.; replication, maintaining avowry, and traverſes eſtate of S. in the lands, 3. *Br.* 332.

That plaintiff held lands of defendant by fealty, and rent paid at a day certain, when defendant avowed for fealty and rent, payable at two certain feaſt days, and ſuit of court, and as to taking one horſe for rent; bar, no rent arrear, and traverſe that he holds by rent payable at two feſtivals, and as to taking the other horſe for fealty; bar, that he offered to do fealty to defendant which he refuſed; replication, did not offer, *Ra. Ent.* 576. *Vet. Int.* 92.

That he held lands by ſervice of eight ſhillings *per ann.* and one fiſh only, and traverſes that defendant was ſeiſed of homage, fealty, and ſuit of court, *Ra. Ent.* 576. That he held houſes by fealty, rent, and ſuit of court, of which nothing is in arrear, and traverſes that defendant was ſeiſed of the homage, *Ra. Ent.* 570. *Vet. Int.* 92.

Bar,

Bar, proteſting that tenements are not held by homage and ſcutage; plea, that he holds of defendant by fealty and rent of four ſhillings, of which rent nothing is in arrear for the four firſt years in the avowry, and that at the time of the taking offered four ſhillings for rent of the fifth year, which defendant refuſed, and took the cattle, and traverſes that defendant was ſeiſed of the rent of eleven ſhillings, unleſs once by diſtreſs; replication, that the rent of eleven ſhillings was in arrear for four years, and that he was ſeiſed of rent of eleven ſhillings without diſtreſs. *Ra. Ent.* 577. *Vet. Int.* 94.

Bar, that he holds by fealty, rent of two ſhillings and other *ſervices* alledged of which nothing except nine ſhillings of rent of eleven ſhillings was in arrear, and as to ſaid nine ſhillings defendant otherwiſe diſtrained plaintiff's beaſts, and detained them until he paid, and ſo defendant was ſeiſed by diſtreſs, and traverſes that he holds by the entire *ſervices* in the Count, *Ra. Ent.* 577.

Avowry by king's bailiff for ſuit of court unperformed by an abbot for ten years, *Ra. Ent.* 573. *Vet. Int.* 48.

That W. held lands of defendant by fealty, rent, and ſuit of court, and defendant was ſeiſed of fealty and rent, W. enfeoffed plaintiff of lands, and defendant avows for ſuit in court. *P.* 4. *E.* 3. 26.

Avowry by tenant in *dower* of one ſeiſed of manor within the hundred, aſſigned to defendant for dower, where plaintiff, by reaſon of the manor, ought to do ſuit at the hundred, and becauſe ſuit of court was undone for three years avows for half a year, *M.* 5. *E.* 3. 3.

That plaintiff holds lands of defendant by certain ſervices, and avows for ſuit of court undone, *Upp.* 91. *Her.* 628.

That plaintiff's father was ſeiſed of one parcel of land called B. and another called C. and held of B. by fealty and rent, and C. by fealty, rent, and ſuit of court, and lord of the manor, cuſtomary heriot for another of them, and avows for two cows and a calf produced within the time; plea, that the father did not die ſeiſed. *Co. Ent.* 613.

That plaintiff's father held land of defendant by fealty, ſuit of court, and heriot, and avows for *heriot*; plea, that J. ſeiſed of the meſſuage and lands whereof, &c. held of defendant by ſaid ſervices, enfeoffed defendant and plaintiff's father of another part, which deſcended to plaintiff: demurrer, 8. *Co.* 103. As to one ox *non cepit*, as to the other that he took it for an *heriot*; plea, *hors de ſon fee*, *Upp.* 110.

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That T. ſeiſed of the manor, had free foldage throughout the *vill*, and if any perſon erected a fold defendant pulled it down, and took the hurdles damage feaſant, *per quod*, &c; bar, that plaintiff, ſeiſed of another manor in the ſame *vill*, had foldage without interruption, and traverſes the preſcription, *Upp.* 106.

That defendant by the cuſtom of the manor was elected ſurveyor of the fields, and took the cattle damage feaſant in ten acres of land, contrary to an ordinance made in the court; bar, that R. being ſeiſed, demiſed to plaintiff, and traverſes the ordinance, 1. *Br.* 160

That mayor, &c. of H. had toll of ſkins ſold in market, and defendant being mayor took the ſkins for *toll* withheld; bar, that plaintiff was a burgeſs of B. and ſo quit of toll in H. and elſewhere throughout the county by *preſcription*; replication, maintaining avowry, traverſes preſcription, *Upp.* 107.

That the dean, &c. ſeiſed of a manor, had a market in the *vill*, and toll of cattle ſold, and diſtrained for *toll* unpaid; manor demiſed to G. who aſſigned to defendant, who avows for *toll* of a cow ſold; replication, *de injuria*, and traverſes preſcription of toll, *Her.* 670.

By an abbot, for *goods waived*, *Her.* 676.

RENTS BY PRESCRIPTION.

Avowry by parſon for *rent* iſſuing out of meſſuage, by preſcription and diſtreſs for it; plea, *de injuria propria*, and traverſes that the parſon was ſeiſed of the rent by preſcription, *Ra. Ent.* 557. Similar avowry; plea, *de injuria*, &c. and traverſes that parſon diſtrained for rent, preſcription, *Ibid.* 558. Similar avowry by *prior* for *rent* iſſuing out of twenty acres of land by preſcription; plea, that plaintiff held the ſaid twenty acres of land of prior by fealty; rent at four ſhillings, and ſuit of court, and traverſe that prior was ſeiſed of rent, ſix ſhillings and eightpence as of rent charge by preſcription, *Ra. Ent* 557. *Upp.* 79 115. 143.

That J. ſeiſed of rent by preſcription, iſſuing out of the ſhop or ſtall in the city, deviſed it to W. who granted in fee to the chapter of Canterbury, who avow for rent unpaid, *Ra. Ent.* 558.

That defendant was ſeiſed of *rent* by preſcription iſſuing out of *locus in quo*, and the uſage was to diſtrain for it; plea in bar, that plaintiff was ſeiſed of lands charged with the rent, and traverſes the ſeiſin of the rent by preſcription and diſtreſs for it, 1. *Br.* 20.

That B. ſeiſed of the manor of L. and J. ſeiſed of the manor of S. every ſeventh year had twenty pounds from the tenants of the manors for talliage called Horne Geld, *Aſh.* 392.

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That defendant, ſeiſed of the manor, had *eſtray* by preſcription, and took the mare as *eſtray*, which he offered to deliver plaintiff on being demanded, if plaintiff would content defendant for depaſturing her; plaintiff refuſed, and defendant avows; bar, *de injuria*, &c. and traverſes that defendant was ſeiſed of the manor; judgment by *nil dicit*, *Br. R.* 414.

That biſhop, being ſeiſed of the manor, had *toll* throughout the year of all merchandizes whatſoever to be carried through the manor to certain parts of the kingdom, and diſtrained for toll unpaid; plea, *de injuria*, and traverſes the preſcription, *Mo. Ent.* 322.

Avowry as bailiff of infant heirs admitted by guardian to the court of the manor of defendant; plea, that the father by will committed the cuſtody of the infants to another; replication, confeſſes, &c. but ſays, that according to the *cuſtom*, &c. it belongs to him to aſſign a guardian to ſuch infants, &c. demurrer, 2 *Lut.* 1181.

Avowry by leſſees for years, damage feaſant in bar, that prebendary, being ſeiſed, &c. had a *toll* to go within the pariſh without impounding, prebendary demiſed to plaintiff for three lives; replication, maintaining the avowry and traverſes preſcription, 3. *Br.* 352.

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Cognizance on ſtatute Car. 2. for regulating militia, *Cliſ.* 366.

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Avowry for moiety of profits of the land on ſtatute for maintenance of houſes in huſbandry, *Ra. Ent.* 576. For levying an aſſeſſment made on plaintiff by commiſſioners of ſewers; replication, *de injuria*, &c. *Her.* 642. Avowry for taking cattle by virtue of commiſſioners of ſewers as bailiff of earl L. *Bro. R.* 417.; replication, *de injuria*, &c. and iſſue.

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Avowry, defendants plead that plaintiff is a diſtiller, and did not make due entries in the exciſe office, according to 13. Car. 2. juſtifies by warrant of juſtices of peace

peace till the plaintiff paid twenty ſhillings in redemption; bar, that E. A. was poſſeſſed of the goods, and made his will, and continued poſſeſſed till defendants took them *de injuria*, &c. *Lev. Ent.* 152.

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Declaration in replevin for taking plaintiff's cattle; 1ſt cognizance as bailiff to J. W. S. acknowledges the taking the cattle in the place in which, &c. becauſe he ſays that the place is a waſte or common of forty acres in the pariſh of W. and in the manor of W. and that within the manor, from time whereof, &c. there hath been another common called W. D. of which manor the ſaid J. W. S. at the ſaid time when, &c. was ſeiſed in fee, and preſcribes in a *que eſtate* for a court leet, and that there has been a cuſtom for a court leet to make bye laws for the preſervation of the common within the manor, and to impoſe penalties upon the farmers and tenants of the manor for breach thereof; and the ſaid J. W. S. and all thoſe, &c. from time whereof, &c. have demanded, received, and taken from the perſons offending againſt ſuch bye law the penalties incurred for breach thereof, and on non-payment to diſtrain the cattle of ſuch farmer or tenant in any place within the manor; and that at a leet held after Michaelmas 1764 a bye law was made, which is ſet forth with a penalty for breach thereof, and for acting contrary to that bye law and all former bye laws; and that the plaintiff was guilty of a breach of the bye law; whereby a penalty of thirty-five pounds was forfeited to the ſaid J. W. S. and the ſame not being paid upon requeſt, but being in arrear the defendant as bailiff to J. W. S. diſtrained the cattle in the place in which, &c. being within the manor, and juſtify, &c.; 2d, cognizance is like the firſt, except in laying the cuſtom to make bye laws a little different from the firſt; 3d cognizance is different from both the others in laying the cuſtom to make bye laws; the plaintiff demurs to all the cognizances generally; the defendant joins in demurrer, 2 Wilſ. Rep. 155 to 163

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Pleas in bar, 1ſt, that defendant of his own wrong took the goods and chattels; 2d, that plaintiff was tenant of the houſe to defendant, - - - - *Ibid.* 592

Declaration in replevin in B. R. for taking houſehold goods; avowry, that tenant in fee of *locus in quo*, being a lot of land demiſed to defendant for a term of fifty-one years, whereupon he entered and built a houſe, where, &c. and demiſed the ſame to plaintiff for a year, at a rent payable

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quarterly, and that he diſtrained for three years rent in arrear; replication, no rent in arrear, and iſſue, - Lill. Ent. 356

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For cattle taken, *Ra. Ent.* 554. 560. *Co. Ent.* 570. 573. 596. 599. 601. 603. 609. *Wilk.* 281. 1. *Co.* 54. 67. 2. *Co.* 27. *Plo.* 269. *P.* 10 *E.* 3. 45. *Vet. Int.* 47. 200. 211. 1. *Br.* 20. 22. 3. *Br.* 339. *Aſh.* 208. 1. *Bro.* 304. *Tho.* 264. 266. *Ro. Ent.* 141. 405. *Wi. Ent.* 812. 816. 826. 836. 840. 868. 879 920. 2. *San.* 194. 283. *Bro. R.* 415. 421. 2. *Ven.* 131. 145. 224. 2. *Lut.* 1131. 3. *Lev.* 120. 141. 2. *Inſt. Cl.* 423. *Lev. Ent.* 154.; and goods, *Ra. Ent.* 128. 557. 568. *Upper B. P.* 114. *Her.* 666.

For a gelding taken, *Wi. Ent.* 859. 860. 3. *Br.* 267. *Her.* 652. 661. For ſteers or bullocks, *H.* 4. *E.* 3. 25. For one ox, *Wi. Ent.* 939. For two, 2. *Lut.* 1131. For a horſe, *Wi. Ent.* 870. For one ſheep, *Ib.* 937. 2. *Lut.* 1237.; ſheep and lambs, *Ib.* 1139. 1231. For a mare, *Wi. Ent.* 849. 886. 911. *Bro. R.* 414. *Co. Ent.* 591. 600. Of heifers, 2. *Lut.* 1157. 1238. Of cows, *Wi. Ent.* 817. 826. 872. 918. 2. *Lut.* 1151. 1190. 3. *Lev.* 141. Of beaſts taken in two places, 2. *Inſt.* 533. 3. *Br.* 316. 325. *Her.* 679. *Co. Ent.* 585. *Wi. Ent.* 835.

For beaſts taken in the county of S. and chaſed into the county of K. and there impounded and replevied, *Her.* 629. 680.

For beaſts taken and impounded at B. in the county of E. parcel of the honour extending into the counties of E. and H. and the court held in the county of H. from whence the plaint was removed by *accedas ad curiam*, *Her.* 629. *Br. R.* 419. *certiorari*.

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For cattle taken in plaintiff's cuſtody, 11. *H.* 4. 17 24.

Declaration againſt a perſon for cattle taken by him, together with another, *Co. Ent.* 600. *M.* 5 *E.* 3. 8. 2. *Inſt.* 533. For cattle, goods, and chattels, *Cliſt.* 640.

By an abbot, for cattle taken in the time of his predeceſſor, 9. *H.* 6. 25.

Declaration on a *ſecond deliverance* of cattle taken, *Ra. Ent.* 572. *Co. Ent.* 589. 595. 4. *Co.* 6. 8. *Co.* 102. *Plo.* 845. *P.* 4. *E.* 20. *P.* 10. *E.* 3. 41. 3. *Br.* 267, 279. *Her.* 590. *Aſh.* 389 401. *Wi. Ent.* 823. 875. 895. 926. 954. 3. *Lev.* 105. *Pl. Gen.* 558. 2. *Inſt. Cl.* 423. Of beaſts as yet detained, *Ra. Ent.* 571. 559. *Co. Ent.* 610. *Vet. Int.* 48. in two places, *Ra. Ent.* 567. 572. *Upper B. P.* 112.

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Declaration wherefore detains twenty ſheep until, &c. and four ſheep, reſidue thereof, he as yet detains, *Pl. Gen.* 601.

For five mares and one filly, 3. *Lev.* 105.

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For one load of hay, *Wi. Ent.* 850. A cart, 2. *Lut.* 1174. For six casks of allum, 1. *San.* 187. Two pigs, 2. *Lut.* 1144.

Declaration in replevin, where defendants in person appear on *supersedeas*, and pay into the hands of the prothonotary to satisfy plaintiff, *Wi. Ent.* 926.

On a plaint removed in the county of B. out of the court of the honour of W. by *certiorari*, *Br. R.* 419.

Declaration in replevin for yet detaining, and praying delivery together of two calves which the cows brought forth in the mean time, *Mo. Int.* 236.

Plea, (after confession of the declaration) a release of plaintiff to defendants W. and W.; replication by way of estoppel, that defendants had twice imparled; and demurrer, 2. *Lut.* 1174.

Declaration for cattle still detained; defendant avows taking part of the cattle; plaintiff thereupon prays that defendant may *gage deliverance* of cattle, which he agrees to do, and writ awarded to sheriff to make deliverance, *Ra. Ent.* 554. *Vet. Int.* 47. *Upp.* 113.

Similar declaration for part of cattle, whereof plaintiff prays that defendant may gage deliverance; avowry, and to delivery says, that he made delivery in the county, and writ awarded to the sheriff to make delivery *si non, &c. Ra. Ent.* 558. *Upp.* 88. Similar declaration; defendant avows, plaintiff prays that defendant may gage deliverance, who finds pledges thereon, and judgment of delivery, *Ra. Ent.* 559. 576.

Similar declaration for ten oxen detained; plaintiff prays that defendant may gage deliverance; as to nine of the cattle gages deliverance, to the other says he died in *pound overt* through plaintiff's default; writ awarded to sheriff of delivery of the cattle, *Ra. Ent.* 565. *Vet. Int.* 47.

Similar declaration; avowry, plaintiff prays delivery; defendant says that part of the cattle died of hunger in the pound, which plaintiff does not deny, and gages deliverance of the residue, *Ra. Ent.* 568.

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Defendant, after issue joined of cattle still detained, says, that he ought not to gage deliverance, because he says that he put the cattle in *pound overt*, where they died of hunger; replication, that defendant converted them to his own use; and traverses that they died of hunger, *Ra. Ent.* 567. *Upp.* 113.

Return by sheriff, that he took the cattle of defendant to the value, on a *pluries* replevin after a return of cattle eloigned on which he and the other defendants are fined for contempt; declaration against them, and gage deliverance on each side; defendant did not deliver the cattle accordingly, and thereon *scire facias* awarded on the recognizance; sureties appear and severally plead that defendant delivered the cattle, and issue; verdict, that he did not deliver the cattle, and judgment thereon, *Co. Ent.* 611.

Declaration for cattle as yet detained; cognizance as bailiff for an annual rent unpaid, and as to delivery of the cattle says, that he impounded them, and afterwards the cattle came to plaintiff's possession, *Br. R.* 415.

As to part of the cattle defendant claims property, as to the residue defendant avows, plaintiff thereupon prays that defendant may gage deliverance of the cattle, upon which defendant says that part of the cattle perished with hunger in the open pound through plaintiff's fault, which plaintiff does not deny, and of the residue defendant gages deliverance, *Mo. Intr.* 316.

Pluries replevin, cattle eloigned returned by the bailiff, and cattle taken on a *capias satisfaciendum in withernam*; declaration thereupon, plaintiff prays defendant may gage deliverance of the cattle before taken; plea, and after issue joined defendant prays that plaintiff may gage deliverance of the cattle taken in

Withernam, who finds pledges thereon, and *ruſa* that defendant may have them thereon at the day of ſubpœna, &c. *Mo. Intr.* 324.

Plea *non cepit* chattels; avows taking cattle, *Ra. Ent.* 565. *Non cepit* two ſteers, and avows taking, *H.* 4. *E.* 3. 25. Plea by one *non cepit*, the other avows, *Ra. Ent.* 561. 565, *Upp. B. P.* 111.

Plea, that defendant is ſeiſed of a cloſe in the ſame *vill* in which he took cattle damage feaſant, and traverſes the taking mentioned in the declaration; replication, iſſue on the plea, *Rq. Ent.* 554. *Wilk.* 282. *Vet. Int.* 48. Traverſe of *locus*, and makes cognizance taking cattle damage feaſant, *Vet. Int.* 244. *Aſh.* 407. *Non cepit* to part, 2. *Br.* 88. Traverſe *locus*, and avows that he is ſeiſed of the manor whereof, &c. he took cattle damage feaſant; replication, that *locus* is called as well by one name as the other, *Ra. Ent.* 556. *Vet. Int.* 211.

Plea *non cepit, in alio loco*, in the ſame *vill*, and *for return* avows in *locus* of parcel of the manor whereof he is ſeiſed, damage feaſant; iſſue on the *locum* of taking, *Her.* 590.

Plea, *cepit* part of the cattle damage feaſant in his cloſe, and traverſes *locus* in declaration, and to reſidue feoffment to uſes and deſcent to F. iſſue on the traverſe; and demurrer to the other plea, *Ra. Ent.* 554.

Plea in abatement of declaration ſince ſecond deliverance, for that *locus in quo* is in another county; judgment, *Ibid.* 274.

Plea in *eſtoppel*, (to declaration on ſecond deliverance, for cattle taken in two *locis* at B.) for that plaintiff firſt counted againſt defendant of taking in *one* place, 3. *Br.* 317.

Plea in bar, proteſting *property* in another, for plea *cepit in alio loco*, *Ra. Ent.* 556. That property of cattle was in defendant, and not plaintiff, and iſſue, *Her.* 677. Of chattels, *Ra. Ent.* 557. *Vet. Int* 53. 93. *Her.* 677. As to part, *property* in defendant, and not plaintiff; as to reſidue, *non cepit*, *Upper B. P.* 128. 3. *Br.* 456. *Non cepit* to part, to reſidue, that *property* in the horſe was in L. and property in the diſh in W. and not plaintiff, *Ra. Ent.* 557. *Upper B. P.* 97. That *property* of the cow was in E. and not plaintiff; and property of two heifers was in J. and not plaintiff, and avows for a return. *Ra. Ent.* 568. That property of one ram was in defendant, and avows for two rams damage feaſant, *Her.* 4.; as to part, that property was in J. and defendant *cepit* as his ſervant, for reſidue avows; replication, that property was in plaintiff, and not in J. *Ra. Ent.* 567. *Upper B. P.* 98.

Avowry as lord of moiety of the *vill*, and that cattle *belonged* to R. and not to plaintiff, and defendant took them damage feaſant; plea in bar, that *locus in quo*, &c. is ſoil of plaintiff in ſeveralty, and that cattle depaſtured by him for profit, and ſo the cattle belonged to him; replication, that *locus in quo* is waſte and held in common, *T.* 3. *E.* 3. 37.

Plea in abatement after hearing plaint returned by ſheriff, *Upper. B. P.* 96.

Plea, that plaintiff delivered to him chattels for ſafe cuſtody, in which caſe plaintiff ought to proſecute *detinue*, and not *replevin*; replication, *ac injuria*, &c. and traverſes delivery, *Ra. Ent.* 569.

Plea in abatement (by chaplain of Canterbury, after demanding to hear the plaint certified into court by *recordari*), for that the chaplain is not a name of *dignity*, and judgment for defendant, *Ra. Ent.* 570.

Plea, that *locus* of taking is in another county, in abatement, *Jud.* 274.

Plea (to Count on ſecond deliverance of cattle taken in *two* places in B.), *eſtoppel*, for that plaintiff firſt counted of taking in *one* place in E. 3. *Br.* 317. Plea in abatement by one; the other avows, *Ra. Ent.* 569.

Plea, *non cepit* to replevin againſt R. and M. his wife, and W. by R.; plea by M. that ſhe is the wife of E.; cognizance by W. as bailiff of E. and M. his wife; replication, that M. is not the wife of E. *Her.* 658. Cognizance as bailiff, for damage feaſant; plea, *non ballivus*, *Her.* 604.

Plea,

Plea, that *property* in one horſe was in R. only, and traverſes the property in R. and B. Similar plea, and traverſe of the other horſe, *Mo. Ent.* 308.

Avowry by virtue of an attachment out of county court againſt one N. D.; plea in bar, that plaintiff was poſſeſſed, and traverſes that N. D. was poſſeſſed, and iſſue, 2. *Lut.* 1196. That *property* of the ox was in one A. and not in plaintiff, and iſſue, 1. *Bro.* 310. *Property* in *part*, reſidue *non cepit*, *Pl. Gen.* 602.

Replevin, that defendant being poſſeſſed of cattle as of his own, &c. delivered them to D. for ſafe cuſtody, who gave them to plaintiff, who took and yet detains; plea in bar, that defendant being poſſeſſed ſold them to plaintiff, who was poſſeſſed until he wrongfully took, &c. and delivered them to D. and plaintiff took them from him, and was again poſſeſſed; replication, maintains avowry, and traverſes *ſelling*, *Mo. Int.* 304.

Writ of enquiry on writ *de proprietate probenda*, for that one outlawed was poſſeſſed of the goods, 7. *H.* 4. 45.

Entry of deliverance gaged, where the defendant took four oxen, and one of them died in pound overt, *Theſ. Br.* 120.

Entry of gage deliverance in the huſtings, *Ibid.* 276.

Returno habendo on default, by plaintiff in replevin; ſheriff's return; cattle eloigned; *capias in withernam*; and ſheriff returns *nil habuit averia*; on which plaintiff makes a *fine* for *contempt*, and finds pledges to proſecute as well the claim as a return of the cattle; declaration thereon and imparlance, *Bro. R.* 418.

Proceſs until gage deliverance of cattle eloigned, and then imparlance to the declaration and avowry, *Co. Ent.* 612.

Pluries replevin; return of cattle eloigned; cattle taken on a *capias* to the value; declaration; imparlance, plaintiff prays deliverance of the cattle firſt taken, and defendants gages delivery of the cattle taken *in withernam*; further imparlance and avowry, 3. *Br.* 310.

RESCUE, or RESCOUS (*See* TORT, *poſt.*)

SCIRE FACIAS (*See* POST.)

STATUTES, ACTIONS ON (*See* ASSUMPSIT, DEBT, TORT.)

SUGGESTIONS ON PARTICULAR STATUTES. } *See* PRACTICAL FORMS.

OF DEATHS. } *See* PRACTICAL FORMS.

ON PROHIBITIONS (*See* VOL. VI.)

TORT, TO PERSONS.

BY DEFAMATION.

In Common Pleas, Eaſter Term, 23. Geo. III.

LONDON, to wit. John Ireland, late of L. warehouſeman, was attached to anſwer unto Michael Bottomley in a plea of treſpaſs on the caſe; and thereupon the ſaid plaintiff, by John Loyd his attorney, complains, that whereas the ſaid plaintiff now is a good, true, honeſt, juſt, and faithful ſubject of this realm, and as ſuch from the time of his nativity hitherto hath always behaved and governed himſelf, and hath always, until the ſpeaking, &c. of the ſeveral falſe, ſcandalous, and defamatory words hereinafter mentioned to have been ſpoken and publiſhed by the ſaid defendant of and concerning the ſaid plaintiff, been ſaid, held, eſteemed, and reputed to be a perſon of good name, fame, credit, and reputation amongſt all his neighbours and other good and worthy ſubjects of this realm, and hath never been guilty, nor until the ſpeaking, &c. of the ſeveral falſe, &c. words hereafter mentioned been ſuſpected to have been guilty of any kind of forgery, robbery, fraud, or diſhoneſty, or of any other ſuch hurtful crime or offence: And whereas before the ſpeaking, &c. of the ſeveral falſe, &c. words hereafter mentioned to have been ſpoken and publiſhed by the ſaid defendant of and concerning the ſaid plaintiff, he the ſaid plaintiff lived with and was in the ſervice of one Rowley in the character or capacity of a clerk, and during ſuch his ſervitude behaved himſelf with the greateſt integrity and honeſty towards his ſaid maſter, and without being guilty of any embezzlement, purloining or taking away money or other things entruſted to his care, whereby and by means of which ſaid ſeveral premiſes he the ſaid plaintiff, before the ſpeaking, &c. of the ſeveral falſe, &c. words hereinafter mentioned, had deſervedly obtained and acquired the benevolence, good opinion, and credit not only of his aforeſaid maſter, but of all other perſons any ways acquainted with him, or to whom he was known, to wit, at L. aforeſaid; yet the ſaid defendant, well knowing the premiſes aforeſaid, but contriving and maliciouſly intending wrongfully and unjuſtly to hurt, prejudice, and damnify the ſaid plaintiff in his aforeſaid good name, &c and to bring him into public hatred, ſcandal, and ignominy, and to ſubject him to the pains and penalties by the laws and ſtatutes of this realm made and provided againſt perſons guilty of forgery, robbery, embezzlement, fraud, or diſhoneſty, on the twenty-eighth of February 1783, to wit, at L. &c. aforeſaid, in a certain diſcourſe which the ſaid defendant then and there had with one Brown, a good and worthy ſubject of this realm, of and concerning the ſaid plaintiff, and of and concerning him the ſaid plaintiff and his conduct and behaviour whilſt in the ſervice of the ſaid Rowley as aforeſaid, he the ſaid defendant then and there falſely and maliciouſly ſaid, ſpake, and publiſhed theſe falſe, ſcandalous, and defamatory words following of and concerning the ſaid plaintiff, and

Declaration for words of *forgery*, robbery, embezzlement of money from one with whom plaintiff was clerk, *with ſpecial damage laid.*

Colloquium.

of and concerning him and his conduct and behaviour whilſt in the ſervice of the ſaid Rowley as aforeſaid, that is to ſay, "He (meaning the ſaid plaintiff) robbed Rowley (meaning the ſaid Rowley, with whom the ſaid plaintiff lived in the capacity of clerk as aforeſaid) of twenty or thirty pounds at a time; he (again meaning the ſaid plaintiff) is run away for a forgery of four or five thouſand pounds, (thereby meaning that the ſaid plaintiff had been and was guilty of forgery, and that he had abſconded to avoid being apprehended for ſuch offence) and all the ſea-ports are ſtopped againſt him (again meaning the ſaid plaintiff), and he (again meaning the ſaid plaintiff) will be hanged if he (again meaning the ſaid plaintiff) ever comes back:" And afterwards, to wit, on the day and year aforeſaid, at L. &c. aforeſaid, in a certain other diſcourſe which the ſaid defendant then and there had with divers good and worthy ſubjects of this kingdom of and concerning the ſaid plaintiff, and of and concerning his conduct and behaviour whilſt in the ſervice of the ſaid Rowley as aforeſaid, he the ſaid defendant then and there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed the other falſe, &c. words following of and concerning the ſaid plaintiff and his conduct and behaviour whilſt in the ſervice of the ſaid Rowley, in the preſence and hearing of thoſe laſt-mentioned ſubject, that is to ſay, "he (meaning the ſaid plaintiff) has been the ruin of Mr. Rowley (meaning the aforeſaid Rowley, and alſo meaning and inſinuating by ſuch laſt-mentioned words that the ſaid plaintiff had acted diſhoneſtly by the ſaid Rowley whilſt he was in his ſervice as aforeſaid;) he (again meaning the ſaid plaintiff) ſpent five hundred pounds (meaning five hundred pounds) a-year, and kept a whore at Iſlington at five guineas *per* week; (thereby meaning and inſinuating, and intending to have it underſtood by the perſons to whom ſuch words were ſpoken that the ſaid plaintiff, whilſt in the ſervice of the ſaid Rowley as aforeſaid, embezzled conſiderable ſums of money, the property of his ſaid maſter, and by that means became enabled to live at the rate and in the manner inſinuated by the ſaid defendant as aforeſaid); and he (again meaning the ſaid plaintiff) robbed him (meaning ſaid Rowley) of thirty-ſix guineas out of his deſk to ſpend at gaming:"

2d Count; embezzling, and other words.

unt.

Like colloquium with the ſecond. Words: "He (meaning the ſaid plaintiff) robbed him (meaning the ſaid Rowley) of twenty or thirty pounds at a time (thereby meaning and inſinuating that the ſaid plaintiff embezzled money of the ſaid Rowley as aforeſaid):"

th Count.

[Colloquium of and concerning the ſaid plaintiff.] Words: "He (meaning the ſaid plaintiff) is run away for a forgery of four or five thouſand pounds, and will be hanged if ever he (again meaning the ſaid plaintiff) comes back (meaning and inſinuating by ſuch laſt-mentioned words that the ſaid plaintiff had been and was guilty of a forgery, for which he was liable to capital puniſhment):"

th Count.

[Like colloquium with the fourth.] Words: "He (meaning the ſaid plaintiff) is run away for forgery (thereby meaning that the ſaid plaintiff had been and was guilty of forgery):] Colloquium like

like that in the ſecond and third counts.] Words: He (meaning the ſaid plaintiff) robbed him (meaning the ſaid Rowley) of thirty-ſix guineas out of his (meaning the ſaid Rowley's) deſk:" By reaſon and means of the ſpeaking and publiſhing of which ſaid ſeveral falſe, &c. words hereinbefore mentioned of and concerning the ſaid plaintiff, he the ſaid plaintiff is very much hurt, injured, and damnified in his aforeſaid good name, &c. and is fallen into public ſcandal, ignominy, and diſgrace amongſt all neighbours and other good and worthy ſubjects of this realm, inſomuch that divers of thoſe neighbours and ſubjects, to whom the innocence and integrity of the ſaid plaintiff in the premiſes were unknown, have always, from the time, &c. of the ſeveral falſe, &c. words hitherto ſo vehemently ſuſpected the ſaid plaintiff to have been and to be guilty of forgery and robbery, and to have embezzled and purloined any money whilſt he was in the ſervice of the ſaid Rowley as aforeſaid, that they have on that account always from the time of ſpeaking ſuch words hitherto wholly refuſed, and ſtill do daily moreover refuſe to have any commerce, acquaintance, or diſcourſe with him, or to to have any thing to do with him as before they were accuſtomed to do, and would have again had not theſe words been ſpoken and ſaid: Plaintiff in fact further ſaith, that by reaſon and means of the ſpeaking, &c. of the ſaid ſeveral falſe, &c. words hereinbefore mentioned of and concerning the ſaid plaintiff one J. W. who was able to procure him the ſaid plaintiff a beneficial place or employment in the character or capacity of a clerk, declined and omitted to procure him ſuch place, office, or employment, or to yield or afford him any aſſiſtance on that occaſion: And one T. T. with whom the ſaid plaintiff was uſed to deal in the courſe and way of trade, and from whom he was uſed to buy and purchaſe goods on credit, and of and from whom he the ſaid plaintiff had bought, beſpoke, and ordered a certain large quantity of goods and merchandize in the way of trade, declined, refuſed, and deſiſted from having any further dealings with him, and withheld and kept back the ſaid goods and merchandizes ſo by him ordered as aforeſaid, and declined and refuſed executing ſuch order, or complying with the ſame, and refuſed to give him further credit, whereby he the ſaid plaintiff loſt and was deprived of all benefit and advantage that would have ariſen to him from his being engaged and employed in ſuch character, office, capacity, or employment as aforeſaid, and all profit, benefit, emolument, and advantage that would have ariſen and accrued to him from the execution of or compliance with the ſaid order ſo by him given to the ſaid T. T. as aforeſaid; and from the further dealings, friendſhip, and aſſiſtance of and with him the ſaid T. T.: And the ſaid plaintiff alſo ſaith, that on occaſion of the ſpeaking, &c. of the ſaid ſeveral falſe, &c. words hereinbefore mentioned, many other perſons with whom he was uſed to deal on credit have refuſed to give him any further credit: And he alſo was, hath been, and is on occaſion of the ſeveral premiſes aforeſaid otherwiſe

greatly injured and damnified, to wit, at L. &c. aforeſaid; wherefore the ſaid plaintiff ſaith he is injured, and hath ſuſtained damages to the amount of one thouſand pounds; and therefore he brings his ſuit, &c. V. LAWES.

Declaration in B. R. for *words of bankruptcy ſpoken of a trader.*

LONDON, to wit. Chriſtopher Hughes complains of William Took the younger, &c. for that whereas the ſaid C. long before, and at the time of the ſpeaking and the publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereinafter mentioned had been, and was a cheeſemonger, and fought his livelihood by buying and ſelling, as others of that trade and buſineſs uſually do, and as ſuch trader had always conducted himſelf with great fairneſs and punctuality towards his creditors, and till the time of the ſpeaking and publiſhing of the ſaid ſeveral words had never been ſuſpected of bankruptcy, inſolvency, or any fraudulent intention, but on the contrary during all the time aforeſaid had been, and at the time of the ſpeaking and publiſhing of the ſaid ſeveral words was in good circumſtances, credit, and eſteem, to wit, at the pariſh of Saint Mary le Bow, in the ward of Cheap, in L. aforeſaid; yet the ſaid William, well knowing the premiſes, but contriving and maliciouſly intending wrongfully and unjuſtly to hurt and prejudice the ſaid C. in his ſaid trade and buſineſs, and to injure his credit, and to cauſe it to be believed that the ſaid C. was inſolvent and likely to become a bankrupt, and that he intended to defraud his creditors of their juſt demands, heretofore, to wit, on the day of A. D. 1789, at L. aforeſaid, in the pariſh and ward aforeſaid, in a certain diſcourſe which the ſaid William then and there had with divers good and worthy ſubjects of this realm, he the ſaid William falſely and maliciouſly ſaid, ſpoke, and publiſhed, in the preſence and hearing of thoſe ſubjects, of and concerning the ſaid C. as ſuch trader as aforeſaid, and of and concerning the ſtate of his circumſtances, theſe falſe, ſcandalous, and defamatory words following, *i. e.* "His (meaning the ſaid C.'s) circumſtances are "very bad; he (again meaning the ſaid C.) has but about twenty-"ſix pounds *per annum*, which he (again meaning the ſaid C.) is "going to make over to his (again meaning the ſaid C.'s) wife, "and then to be made a bank: pt" (meaning by the ſaid words not only that the ſaid C. was on the verge of becoming bankrupt, but alſo that he was about to make a fraudulent conveyance of his property, with a view of protecting it from his creditors): And afterwards, to wit, on the day and year aforeſaid, at L. aforeſaid, in the pariſh and ward aforeſaid, in a certain other diſcourſe which the ſaid William then and there had with divers other good and worthy ſubjects of this realm, he the ſaid William falſely and maliciouſly ſaid, ſpoke, and publiſhed, in the preſence and hearing of thoſe laſt-mentioned ſubjects, of and concerning the ſaid C. as ſuch trader as aforeſaid, *and of and concerning the ſtate of his circumſtances* [theſe words in italic omitted in the laſt count of the declaration], theſe other falſe, ſcandalous, and defamatory

2d Count.

ſamatory words following, *i. e.* Mr. Hughes's (meaning the ſaid C.'s) circumſtances are very bad; he (meaning the ſaid C.) is going to be made a bankrupt:" "He (meaning the ſaid C.) is going to make over his (meaning the ſaid C.'s) property, and then to be made a bankrupt" (meaning by the ſaid laſt-mentioned words not only that the ſaid C. was on a verge of a bankruptcy, but alſo that he was about to attempt a fraudulent diſpoſition of his property to the prejudice of his creditors:) His (meaning the ſaid C.'s) circumſtances are very bad" (meaning by the ſaid laſt-mentioned words that the ſaid C. was inſolvent, and incapable of paying his debts): "He (meaning the ſaid C.) is going to be a bankrupt; by means of the ſpeaking and publiſhing of which ſaid ſeveral falſe, ſcandalous, and defamatory words, the ſaid C. hath been greatly hurt and injured in his ſaid trade and buſineſs, and his credit materially injured, inſomuch that divers perſons, to whom the ſituation and circumſtances of the ſaid C. were known, have from thence hitherto believed him to be inſolvent and likely to become a bankrupt, and have alſo ſuſpected him of intending to defraud his creditors of their juſt demands; and the ſaid C. is by the means aforeſaid otherwiſe greatly injured and damnified, to wit, at L. aforeſaid, in the pariſh and ward aforeſaid, to the damage of the ſaid C. of pounds; and therefore he brings ſuit, &c. Pledges, &c. S. MARRYAT.

3d do

4th Count.

5th Count.

Hilary Term, 27 Geo. III.

ROLL, 1514.

SAMUEL BUTLER *againſt* JOHN JONES. } LONDON, to wit, &c. For that the ſaid Samuel now is a good, honeſt, juſt, and faithful ſubject of this kingdom, and as ſuch hath always, from the time of his nativity, hitherto behaved and governed himſelf, and hath always, until the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereinafter mentioned to have been ſpoken and publiſhed by the ſaid John of and concerning the ſaid S. been held and reputed to be a perſon of good name, fame, and credit amongſt all his neighbours and other good and worthy ſubjects of this kingdom, and hath never been guilty, nor until the ſpeaking and publiſhing of the ſaid ſeveral words been ſuſpected to have been guilty of any robbery, theft, or fraud, or of any other ſuch hurtful crime: And whereas the ſaid Samuel for divers, to wit, eight years before the ſpeaking and publiſhing of the ſaid ſeveral words had lived with and been in the ſervice of the ſaid John, and during ſuch his ſervice had behaved and conducted himſelf with the greateſt fidelity and honeſty towards the ſaid John, without embezzling or purloining any money or other things entruſted to his care, and without ever defrauding the ſaid John of any money or other thing; by means of which ſaid ſeveral premiſes he the ſaid Samuel had deſervedly obtained the benevolence, good opinion, and credit of all his neighbours and other good and worthy ſubjects of this kingdom,

Caſe for *words of felony* ſpoken of a ſervant by his maſter.

kingdom to whom he was known, to wit, at L. aforeſaid, in the pariſh of All Hallows, Lombard Street, in the ward of : And whereas a little before the ſpeaking and publiſhing of the ſaid ſeveral words the ſaid S. had quitted and left the ſervice of the ſaid John, to wit, at L. aforeſaid, in the pariſh and ward aforeſaid: And whereas before the ſpeaking and publiſhing of the ſaid ſeveral words in the firſt and ſecond counts of this declaration mentioned a certain guinea had been left at the ſhop of the ſaid John of one Mary Chitty, for the purpoſe of being exchanged on account of a ſuppoſed deficiency in the weight of the ſaid guinea, to wit, at at L. &c. aforeſaid, yet the ſaid John, well knowing the premiſes, but contriving and maliciouſly intending wrongfully and unjuſtly to hurt, injure, and prejudice the ſaid S. in his aforeſaid good name, fame, and credit, and to bring him into public ſcandal, infamy, and diſgrace, and to ſubject him to the pains and penalties by the laws and ſtatutes of this kingdom made and provided againſt perſons guilty of robbery, theft, embezzlement, fraud, and diſhoneſty heretofore, to wit, on the twentieth of April A. D. 1783, at L. &c. aforeſaid, in a certain diſcourſe which he the ſaid John then and there had with divers good and worthy ſubjects of this kingdom, of and concerning the ſaid guinea ſo left by the ſaid M. C. to be exchanged as aforeſaid, and of and concerning the ſaid S. he the ſaid John then and there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed theſe falſe, ſcandalous, and defamatory words following, of and concerning the ſaid guinea, and of and concerning the ſaid S. and his conduct and behaviour in the ſervice of the ſaid J. as aforeſaid, in the preſence and hearing of thoſe laſt-mentioned ſubjects, *i. e.* Mr. Butler (meaning the ſaid J.) has it (meaning the ſaid guinea) I (meaning himſelf) know, and many other guineas of mine (meaning of his the ſaid John's) beſides (meaning by the ſaid words, that the ſaid Samuel had embezzled not only the ſaid guinea, but alſo other monies of the ſaid John whilſt he was in the ſervice of the ſaid John as aforeſaid): And afterwards, to wit, on the day and year aforeſaid, at L. &c. aforeſaid, in a certain other diſcourſe which he the ſaid John then and there had with divers other good and worthy ſubjects of this kingdom, of and concerning the ſaid guinea ſo left by the ſaid M. C. to be exchanged as aforeſaid, and of and concerning the ſaid Samuel, he the ſaid John then and there falſely and maliciouſly rehearſed, proclaimed, and loudly publiſhed theſe other falſe, ſcandalous and defamatory words following of and concerning the ſaid guinea, and of and concerning the ſaid S. in his conduct and behaviour in the ſervice of the ſaid J. as aforeſaid, in the preſence and hearing of thoſe laſt-mentioned ſubjects, *i. e.* I (meaning himſelf the ſaid John) am not ſurprized at it; it (meaning the ſaid guinea) is not the only guinea by many I (again meaning himſelf the ſaid John) have reaſon to ſuppoſe Mr. Butler (meaning the ſaid S.) has defrauded me (meaning himſelf the ſaid John) of (meaning and inſinuating by the ſaid laſt-mentioned words, that he the ſaid John had reaſon to ſuppoſe that the ſaid S. had defrauded the ſaid John not

Colloquium.

d Count, ſpeaking in another way.

not only of the ſaid guinea, but alſo of various other ſums of money whilſt he was in the ſervice of the ſaid John as aforeſaid): And afterwards, to wit, on the twenty-firſt of April, in the year aforeſaid, at L. &c. aforeſaid, in a certain other diſcourſe which he the ſaid J. then and there had with divers other good and worthy ſubjects of this kingdom of and concerning the ſaid Samuel, and his conduct and behaviour in the ſervice of the ſaid John as aforeſaid, he the ſaid John then and there falſely and maliciouſly rehearſed, proclaimed, and loudly publiſhed theſe other falſe, ſcandalous, and defamatory words following, of and concerning the ſaid S. and his conduct and behaviour in the ſervice of the ſaid John as aforeſaid, in the preſence and hearing of theſe laſt-mentioned ſubjects, *i. e.* He (meaning the ſaid S.) made himſelf a partner in my ſhop (meaning the ſhop of him the ſaid John) without leave, and pocketed money that ſhould have been put into the till (meaning and inſinuating by the ſaid laſt-mentioned words, that the ſaid Samuel, whilſt he was in the ſervice of the ſervice of the ſaid John as aforeſaid, had embezzled the property and money of the ſaid John): [Colloquium like that in the third Count.] Words: He (meaning the ſaid S.) made himſelf a partner in my ſhop (meaning the ſhop of him the ſaid John) without leave (meaning and inſinuating by the ſaid laſt-mentioned words, that the ſaid S. had acted diſhoneſtly, and defrauded the ſaid J. of his money and property whilſt in his ſervice as aforeſaid): [Same colloquium.] Words: He (meaning the ſaid S.) pocketed money that ought to have been put into the till (meaning and inſinuating by the ſaid laſt-mentioned words, that the ſaid S. whilſt he was in the ſervice of the ſaid John as aforeſaid, had embezzled the money of the ſaid John): And afterwards, to wit, on the twenty-ſecond of April, A. D. 1786, at L. &c. aforeſaid, in a certain other diſcourſe which he the ſaid John then and there had with divers other good and worthy ſubjects of this kingdom of and concerning the ſaid S. he the ſaid John then and there falſely and maliciouſly ſaid, ſpake, and loudly publiſhed theſe other falſe, ſcandalous, and defamatory words following, of and concerning the ſaid Samuel, in the preſence and hearing of thoſe ſubjects, *i. e.* Mr. Butler (meaning the ſaid S.) is a thief, and has robbed me (meaning him the ſaid John) of two or three guineas: [Same colloquium as the 6th.] Words: He (meaning the ſaid Samuel) is a thief: [Same colloquium as the two next preceding Counts.] Words: He (meaning the ſaid S.) robbed me (meaning him the ſaid John) of two or three guineas: [Same colloquium as the third.] Words: Mr. Butler (meaning the ſaid S.) is a thief, and has robbed me (meaning the ſaid John) of two or three guineas (meaning by the ſaid words, that the ſaid Samuel had in the ſervice of the ſaid John acted unfaithfully, and had defrauded the ſaid John of his money): [Same colloquium as the third.] Words: He (meaning the ſaid Samuel) robbed me (meaning the ſaid John) of two or three guineas (meaning by the ſaid words, that the ſaid S. had, whilſt in the ſervice of the ſaid John, defraud-

3d Count.

4th Count.

5th Count.

6th Count.

7th Count.

8th Count.

9th Count.

10th Count.

ed

ed the ſaid John of his money); by reaſon and means of the ſpeaking and publiſhing of which ſaid ſeveral falſe, ſcandalous, and defamatory words of and concerning the ſaid Samuel, he the ſaid S. is greatly injured and prejudiced in his aforeſaid good name, fame, and credit, and brought into public ſcandal, infamy, and diſgrace amongſt all his neighbours and other good and worthy ſubjects of this kingdom, inſomuch that divers of thoſe neighbours and ſubjects to whom the innocence and integrity of the ſaid S. in the premiſes were unknown, have, on occaſion of the ſpeaking and publiſhing the ſaid ſeveral words, from thence hitherto ſuſpected, and ſtill do ſuſpect the ſaid S. to have been, and to be guilty of robbery, theft, embezzlement, fraud, and diſhoneſty, and have on that account from thence hitherto refuſed, and ſtill refuſe to have any commerce, acquaintance, or diſcourſe with him, or to have any thing to do with him, as they were before uſed and accuſtomed to do, and would have done again, had not thoſe words been ſo ſpoken and publiſhed as aforeſaid; and the ſaid S. by means of the ſpeaking and publiſhing thereof, hath been and is otherwiſe greatly injured and damnified, to wit, at L. &c. aforeſaid, to the damage of the ſaid S. of one thouſand pounds; and therefore he brings ſuit, &c. S. MARRYAT.

Plea of juſtification, that the words are true as to ſome Counts.

Firſt, Not guilty to the whole, and iſſue thereon; 2d, as to ſo much of the ſaid words ſuppoſed to have been ſpoken and publiſhed by the ſaid John in the firſt, ſecond, third, fourth, fifth, ninth, and laſt Counts of the ſaid declaration contained, as reſpectively relate to the ſaid S. having, in the ſaid ſervice of the ſaid John, acted unfaithfully and diſhoneſtly, and defrauded the ſaid John of, and embezzled his money and property, he the ſaid John ſays, that the ſaid S. ought not to have or maintain his aforeſaid action thereof againſt him; becauſe he ſays, that true it is that the ſaid Samuel had lived with and been in the ſervice of the ſaid John, and had quitted and left the ſervice of the ſaid John in manner and form as in the ſaid declaration is above ſuppoſed; but the ſaid John further ſays, that before any of the ſaid times when the ſaid words are ſuppoſed to have been ſpoken and publiſhed, the ſaid S. had in the ſervice of the ſaid John, to wit, on the firſt of January, A. D. 1786, and on divers other days and times between that day and the ſaid nineteenth of April, in the ſaid year of Our Lord 1786, at L. &c. aforeſaid, without the leave of the ſaid John pocketed and embezzled divers ſums of money of the ſaid John, which had come to his hands in the ſaid ſervice of the ſaid John, and which ought to have been put into the till of the ſaid John, amounting to a large ſum of money, to wit, the ſum of four pounds of lawful, &c. and defrauded the ſaid John of the ſame, and thereby acted unfaithfully and diſhoneſtly whilſt in the ſaid ſervice of him the ſaid John, to wit, at L. &c. aforeſaid; wherefore the ſaid John, at the ſaid ſeveral times when, &c. did ſay, proclaim, rehearſe, and publiſh the ſaid ſeveral words relating thereto, and in the ſaid firſt, ſecond, third, fourth, fifth, ninth, and

and laſt Counts of the ſaid declaration mentioned, of and concerning the ſaid Samuel, as it was lawful for him to do for the cauſe laſt aforeſaid; and this the ſaid John is ready to verify, wherefore he prays judgment if the ſaid Samuel ought to have or maintain his aforeſaid action thereof againſt him, &c.: And the ſaid John, for further plea in this behalf, by like leave of the court here firſt had and obtained for that purpoſe, according to the form of the ſtatute in ſuch caſe made and provided, as to ſo much of the ſaid words ſuppoſed to have been ſpoken and publiſhed by the ſaid John, and in the firſt, ſecond, third, fourth, fifth, ninth, and laſt Counts of the ſaid declaration contained, as reſpectively relate to the ſaid Samuel having, in the ſaid ſervice of the ſaid John, acted unfaithfully and diſhoneſtly, and defrauded the ſaid John of, and embezzled his money and property (*actio non*); becauſe he ſays, that true it is that the ſaid S. had lived with and been in the ſervice of the ſaid John, and had quitted and left the ſervice of the ſaid John in manner and form as in the ſaid declaration above ſuppoſed; but the ſaid John further ſays, that before any of the ſaid times when the ſaid words are ſuppoſed to have been ſpoken and publiſhed, to wit, on the nineteenth of April, A. D. 1786, at L. &c. aforeſaid, the ſaid S. *acknowledged and confeſſed to the ſaid John that he had* at divers times whilſt he was in the ſervice of him the ſaid John, ſecreted and embezzled monies of the ſaid John which had come to his hands in the ſaid ſervice of him the ſaid John, not exceeding in the whole the ſum of four pounds four ſhillings of lawful money of Great Britain, and that he had thereby acted unfaithfully and diſhoneſtly whilſt in the ſervice of him the ſaid John, wherefore the ſaid John, at the ſaid ſeveral times when, &c. did ſay, proclaim, rehearſe, and publiſh the ſaid ſeveral words relating thereto, and in the ſaid firſt, ſecond, third, fourth, fifth, ninth, and laſt Counts of the ſaid declaration mentioned, of and concerning the ſaid S. as it was lawful for him to do for the cauſe laſt aforeſaid; and this the ſaid John is ready to verify; wherefore he prays judgment if the ſaid S. ought to have or maintain his aforeſaid action thereof againſt him, &c.: And for further plea in this behalf, the ſaid John, by leave of the court here to him for that purpoſe firſt granted, according to the form of the ſtatute in ſuch caſe made and provided as to ſo much of the ſaid words ſuppoſed to have been ſpoken by the ſaid John, and in the firſt and ſecond Counts of the ſaid declaration mentioned, as relates to the ſaid S. having embezzled the ſaid guinea, by the ſaid declaration ſuppoſed to have been left at the ſhop of the ſaid John by the ſaid M. C. for the purpoſe in that behalf therein mentioned (*actio non*); becauſe he ſays, that true it is that the ſaid Samuel had lived with and been in the ſervice of the ſaid John, and had quitted and left the ſervice of the ſaid John in manner and form as in the ſaid declaration is above ſuppoſed; but the ſaid John farther ſays, that before the ſaid time when the words are ſuppoſed to have been ſpoken as aforeſaid, or either of thoſe times, to wit, on the nineteenth of April, in the year of Our Lord 1786, the ſaid S. did embezzle

3d Plea, the plaintiff confeſſed, &c.

4th Plea, words are true as to other Counts.

embezzle the ſaid guinea, to wit, at L. &c. aforeſaid; wherefore he the ſaid John, at the ſeveral times when, &c. did ſay, rehearſe, proclaim, and publiſh the ſaid ſeveral words relating thereto, and in the ſaid firſt and ſecond Counts of the ſaid declaration mentioned, of and concerning the ſaid S. as it was lawful for him to do for the cauſe aforeſaid; and this the ſaid John is ready to verify, wherefore he prays judgment if the ſaid S. ought to have or maintain his aforeſaid action thereof againſt him, &c.

C. RUNNINGTON.

Replication. And the ſaid S. as to the ſaid plea of the ſaid John by him ſecondly above pleaded in bar, as to ſo much of the ſaid words ſpoken and publiſhed by the ſaid John, and in the firſt, ſecond, third, fourth, fifth, ninth, and laſt Counts of the ſaid declaration mentioned, as reſpectively relate to the ſaid S. having, in the ſervice of the ſaid John, acted unfaithfully and diſhoneſtly, and defrauded the ſaid John of, and embezzled his money and property, ſays (*precludi non*); becauſe he ſays, that the ſaid John, at the ſaid ſeveral times when, &c. of his own wrong, and without any ſuch cauſe as the ſaid John hath in and by the ſaid laſt-mentioned plea in that behalf alledged, ſaid, proclaimed, rehearſed, and publiſhed the ſaid ſeveral words relating thereto, and in the ſaid firſt, ſecond, third, fourth, fifth, ninth, and laſt Counts of the ſaid declaration mentioned, of and concerning the ſaid S. in manner and form as the ſaid S. hath in and by the ſaid firſt, ſecond, third, fourth, fifth, ninth, and laſt Counts of the ſaid declaration above thereof complained againſt the ſaid John; and this the ſaid S. prays may be enquired of by the country, and the ſaid John doth the like. [There were ſimilar replications to the two laſt pleas, as to the words they reſpectively purported to juſtify, and iſſues thereon, with an award of *venire* on the laſt return of Hilary term.]

S. MARRYAT.

Continuance. At which day, before our lord the king at Weſtminſter, come the parties aforeſaid by their attornies aforeſaid, and the ſheriffs do not return the ſaid writ, nor have they done any thing thereupon; therefore let a jury thereupon come before our lord the king at Weſtminſter on Monday next after the morrow of the Aſcenſion in, &c. by whom, &c. and who, &c. and who neither, &c. to recognize, &c. becauſe as well, &c. the ſame day is given to the ſaid parties there, &c.

Poſtea, where plaintiff being nonſuited, makes default at the trial. Afterwards the proceſs being continued between the parties aforeſaid of the plea aforeſaid, by the jury between them being reſpited, before our lord the king at Weſtminſter until Friday next after the morrow of the Holy Trinity, unleſs the king's right truſty and well-beloved William, earl of Mansfield, his majeſty's chief juſtice aforeſaid to hold pleas before the king himſelf, ſhould firſt come on Wedneſday, the twenty-third of May, at the Guildhall of the city of London, according to the form of the ſtatute

in ſuch caſe made and provided, for default of jurors, becauſe none of them did appear; at which day, before our lord the king at Weſtminſter, come the parties aforeſaid by their attornies, and the ſaid chief juſtice, before whom the ſaid iſſues were, hath ſent hither his record in theſe words, to wit: Afterwards, that is to ſay, on the day and at the place within-mentioned, before the right honourable William, earl of Mansfield, the chief juſtice within written, John Way, gentleman, being aſſociated unto the ſaid chief juſtice by force of the ſtatute in that caſe made and provided, comes the within-named Samuel, by his attorney within-contained, and the within-named John Jones, although ſolemnly required, comes not, but makes default; therefore let the jurors of the jury within-mentioned be taken againſt him by his default, and the jurors of that jury being ſummoned, come, who to ſay the truth of the within-contents being choſen, tried, and ſworn, upon their oath ſay, as to the ſaid iſſue between the parties aforeſaid firſt within-joined, that the ſaid John Jones is guilty of the premiſes in the ſaid ſecond Count of the ſaid declaration mentioned, in manner and form as the ſaid James hath in and by the ſaid ſecond Count thereof complained againſt him, and that he the ſaid John J. is not guilty of the reſidue of the premiſes in the ſaid declaration mentioned, as the ſaid S. hath within thereof complained againſt him: And as to the ſaid iſſue between the parties aforeſaid ſecondly within-joined, the ſaid jurors, upon their ſaid oath, further ſay, that the ſaid John J. of his own wrong, and without any ſuch cauſe as he hath in his ſecond plea in that behalf alledged, ſpoke and publiſhed the ſaid words in the ſaid ſecond Count mentioned, relating to the ſaid S. having in the ſervice of the ſaid John acted unfaithfully and diſhoneſtly, and defrauded the ſaid John of his money, in manner and form as the ſaid Samuel hath in and by the ſaid ſecond Count thereof complained againſt him: And as to the ſaid iſſue between the parties aforeſaid thirdly within-joined, the ſaid jurors, on their ſaid oath, further ſay, that the ſaid J. J. of his own wrong, and without any ſuch cauſe as he hath in his third plea in that behalf alledged, ſpoke and publiſhed the ſaid words in the ſaid ſecond Count mentioned, relating to the ſaid Samuel having in the ſaid ſervice acted unfaithfully and diſhoneſtly, and defrauded the ſaid John of his money, in manner and form as the ſaid Samuel hath in and by the ſaid ſecond Count thereof complained againſt him: And the ſaid iſſue between the parties aforeſaid fourthly within-joined, the ſaid jurors, upon their ſaid oath, further ſay, that the ſaid John J. of his own wrong, and without any ſuch cauſe as he hath in his fourth plea in that behalf alledged, ſpoke and publiſhed the ſaid words in the ſaid ſecond Count mentioned, relating to the ſaid Samuel having embezzled the ſaid guinea left at the ſhop of the ſaid John for the purpoſe in that behalf in the ſaid declaration mentioned, in manner and form as the ſaid S. hath in and by the ſaid ſecond Count thereof complained againſt him; and they aſſeſs the damages, and the ſaid Samuel, by reaſon of the premiſes in the ſaid ſecond Count

Poſtea.

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mentioned, over and above his coſts and charges by him about his ſuit in that behalf expended to two hundred pounds, and for thoſe coſts and charges to forty pounds; and becauſe the court here is not yet adviſed about giving their judgment of and concerning the premiſes, day is given to the ſaid parties to be before our ſaid lord the king at Weſtminſter on Tueſday next after the morrow of All Souls, to hear their judgment thereof; at which day, before our ſaid lord the king at Weſtminſter, come the parties aforeſaid by their attornies aforeſaid; and becauſe, &c. [Like continuances, *curia adv. vult.*] to Wedneſday next after fifteen days of St. Hilary, from thence to Wedneſday next, fifteen days from the day of Eaſter, and from thence to Friday after the morrow of the Holy Trinity; at which day, before our ſaid lord the king at Weſtminſter, come the parties aforeſaid by their attornies aforeſaid, whereupon the court here having ſeen and fully underſtood all and ſingular the premiſes, it is conſidered that the ſaid S. recover againſt the ſaid John J. the damages aforeſaid by the ſaid jury in form aforeſaid aſſeſſed, and alſo ninety-four pounds for his coſts and charges by the ſaid court here adjudged of increaſe to the ſaid Samuel with his aſſent, which ſaid damages in the whole amount to two hundred and ninety-ſix pounds, and let the ſaid John Jones be thereof in mercy, and let the ſaid S. be alſo in mercy for his falſe complaint againſt the ſaid John Jones as to the reſidue of the premiſes in the ſaid declaration mentioned, whereof the ſaid John is acquitted as aforeſaid; and let the ſaid John J. go thereof without day, &c.

Continuances.

Judgment ſigned 26th of July 1788.

Mercy.

Declaration in B. R. for *words of diſhoneſty* ſpoken *of an attorney* in his profeſſion, whereby he loſt his clients.

LONDON, to wit. Alexander Dickenſon, gentleman, one of the attornies of the court of our lord the now king, before the king himſelf preſent here in court in his own proper perſon, according to the liberties and privileges of the ſaid court, from time immemorial uſed and approved of therein, complains of Daniel Daniel being, &c. of the ſaid lord the king, before the king himſelf; for that whereas the ſaid A. before and at the time of ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereinafter mentioned, had been and was an attorney, and had always demeaned and conducted himſelf in his profeſſion as ſuch attorney with great fairneſs and integrity, and till the time of the ſpeaking and publiſhing of the ſaid ſeveral words, had never been ſuſpected to have been guilty of any fraud, knavery, or mal-practice, but on the contrary thereof during all the time aforeſaid had been, and at the time of the ſpeaking and publiſhing of the ſaid words, was in great reputation and eſteem amongſt all his neighbours and acquaintance, and was then daily and honourably acquiring great profits and emoluments in the way of his aforeſaid profeſſion, to wit, at the pariſh of St. Mary-le-Bow, in the ward of Cheap, in L. aforeſaid: And whereas a ſhort time before the ſpeaking and publiſhing of the ſeveral words in the three firſt Counts of this declaration mentioned, the ſaid Alexander

ander, in the way of his ſaid profeſſion, had been employed to convene a meeting of creditors of one Peter Brown, who was then inſolvent, and for that purpoſe the ſaid A. had written and ſent letters to divers of ſuch creditors, and the ſaid Alexander thereupon being retained and directed to prepare, and had accordingly prepared a certain deed, purporting to be an aſſignment from the ſaid Peter Brown to one Richard Dowding and one Jacob Dimming, two of his ſaid creditors, of certain property and effects of the ſaid P. Brown, as truſtees for the purpoſe of making a fair and rateable diſtribution of the money to ariſe from ſuch property and effects (after certain payments particularly directed by the ſaid deed) amongſt themſelves, and the other creditors of the ſaid R. Brown, who ſhould come in and execute the ſame, and thereby accept the benefit provided for ſuch creditors as a compoſition for and in full diſcharge of their reſpective demands, which ſaid deed had been duly executed by divers creditors of the ſaid P. Brown, to wit, at L. &c. aforeſaid; and the ſaid D. who was then and there a creditor of the ſaid P. Brown, entitled to come into ſuch compoſition, and thereupon to have an equal benefit in proportion to his debt with the other creditors under the ſaid aſſignment, but no greater or other benefit whatſoever; yet the ſaid D. well knowing the premiſes, but contriving and maliciouſly intending wrongfully and unjuſtly to hurt and injure the ſaid A. not only in his reputation, but alſo in his aforeſaid profeſſion, and to cauſe him to be ſuſpected of diſhoneſt, corrupt, knaviſh, and fraudulent practices therein heretofore, to wit, on the firſt of January A. D. 1790, at L. &c. aforeſaid, in a certain diſcourſe which the ſaid D. then and there had with divers good ſubjects of this kingdom, he the ſaid D. then and there falſely and maliciouſly ſaid, ſpoke, and publiſhed in the preſence and hearing of thoſe ſubjects of and concerning the ſaid compoſition and deed of aſſignment, and of and concerning the ſaid A. and his conduct reſpecting the ſame, and alſo of and concerning a debt ſo due to the ſaid D. from the ſaid P. B. theſe falſe, ſcandalous, and defamatory words following; that is to ſay, "Dickſon (meaning the ſaid A.) offered, in caſe I (meaning himſelf the ſaid Daniel) would give him (again meaning the ſaid A.) five guineas, and ſign the deed, (meaning the aforeſaid deed) that he (again meaning the ſaid A.) would procure for me (again meaning himſelf the ſaid Daniel) the whole of my money, (meaning the whole of his ſaid debt) and I (again meaning himſelf the ſaid Daniel) have got it (meaning the whole of his ſaid debt)" in conſequence," (meaning by the ſaid ſeveral words that the ſaid A. had for his own private emolument colluded with the ſaid Daniel to procure him a fraudulent preference in reſpect of his debt over other creditors of the ſaid P. B. coming in under the ſaid deed:) And afterwards, to wit, on the day and year aforeſaid, at L. &c. aforeſaid, in a certain other diſcourſe which the ſaid D. then and there had with divers other good and worthy ſubjects of this kingdom, he the ſaid Daniel then and there falſely and maliciouſly ſaid, ſpoke, and publiſhed in the preſence

2d Count.

preſence and hearing of thoſe laſt-mentioned ſubjects, of and concerning the ſaid compoſition or deed of aſſignment, and of and concerning the ſaid A. and his conduct reſpecting the ſame, of and concerning the debt ſo due to the ſaid Daniel from the ſaid P. B. theſe other falſe, ſcandalous, and defamatory words following, that is to ſay, "Dickſon (meaning the ſaid A.) offered to procure me (meaning himſelf the ſaid Daniel) the whole of my money (meaning the whole of his ſaid debt), if I (again meaning himſelf the ſaid Daniel) would give him (again meaning the ſaid A.) two guineas, and execute the deed, (meaning the aforeſaid deed) for that he (again meaning the ſaid A.) had the power in his (meaning the ſaid A.'s) own hands, and I (again meaning himſelf the ſaid Daniel) have by that means (meaning by means of having given ſuch ſum of money to the ſaid A.) got all that was due to me" (again meaning himſelf the ſaid Daniel, and alſo meaning and inſinuating by the ſaid laſt-mentioned words, that the ſaid A. had aſſiſted the ſaid Daniel in procuring a fraudulent preference in reſpect of his ſaid debt over the other creditors executing the ſaid deed:) And afterwards, to wit, on the day and year aforeſaid, at L. &c. aforeſaid, in a certain other diſcourſe which the ſaid Daniel then and there had with divers other good ſubjects of this kingdom, he the ſaid Daniel then and there falſely and maliciouſly ſaid, ſpoke, and publiſhed in the preſence and hearing of thoſe laſt-mentioned ſubjects, of and concerning the letters hereinbefore mentioned to have been written by the ſaid A. and of and concerning the ſaid compoſition and deed of aſſignment, and the conduct of the ſaid A. reſpecting the ſame, theſe other falſe, ſcandalous, and defamatory words following, *i. e.* "The letters that Dickſon (meaning the ſaid A.) wrote for the creditors (meaning the creditors of the ſaid P. B.) to meet on the ſtate of Brown's (meaning the ſaid P. B.'s) affairs were only a blind, and entirely a meaſure between me, (meaning himſelf the ſaid Daniel) Dickſon, (again meaning the ſaid A.) and the truſtees" (meaning the ſaid Richard Dowding and Jacob Dimming, and alſo meaning and inſinuating by the ſaid laſt-mentioned words, that the ſaid A. was engaged with the ſaid Daniel, the ſaid Richard Dowding, and Jacob Dimming, in a colluſive contrivance to deceive and defraud the other creditors of the ſaid P. B.): And afterwards, on the day and year aforeſaid, at L. &c. aforeſaid, in a certain other diſcourſe which the ſaid Daniel then and there had with divers other good and worthy ſubjects of this kingdom, he the ſaid Daniel then and there falſely and maliciouſly ſaid, ſpoke, and publiſhed of and concerning the ſaid A. in his profeſſion and practice aforeſaid of an attorney, in the preſence and hearing of theſe laſt-mentioned ſubjects, theſe other falſe, ſcandalous, and defamatory words following, *i. e.*: "His (meaning the ſaid A.'s) conduct has been ſuch, as to put it in my (meaning his the ſaid Daniel's) power to get him (again meaning the ſaid A.) ſtruck off the roll," (meaning by the ſaid laſt-mentioned words, that the ſaid A. had been guilty of mal-practice in his aforeſaid profeſſion, for which he the ſaid Daniel might cauſe him to be ſtruck off the roll of attornies);

1 Count.

4th Count.

by

by means of the ſpeaking and publiſhing of which ſaid ſaid ſeveral falſe, ſcandalous, and defamatory words, the ſaid A. is not only greatly injured in his reputation, and alſo in his profeſſion aforeſaid, and brought into public ſcandal, infamy, and diſgrace with and amongſt all his neighbours and acquaintance, and ſuſpected of diſhoneſt, corrupt, knaviſh, and fraudulent practices in his ſaid profeſſion, but alſo one A. B. one C. D. and one E. F. who before the ſpeaking and publiſhing of the ſaid words, had ſeverally employed the ſaid A. in the way of his aforeſaid profeſſion, and would have continued to have done ſo had not ſuch words been ſpoken, and in conſequence of the ſpeaking and publiſhing thereof, and on no other account whatſoever, ceaſed to employ him in ſuch profeſſion, and reſpectively wholly refuſed to have any future concerns with him, whereby the ſaid Alexander hath loſt and been deprived of all ſuch profits and emoluments as would have accrued to him from continuing to be employed as an attorney by the ſaid A. B. &c. reſpectively, and is alſo, by means of the premiſes, otherwiſe greatly injured and damnified, to wit, at L. &c. aforeſaid, to the damage of the ſaid A. of five hundred pounds, and therefore he brings ſuit, &c. pledges, &c. S. MARRYAT.

Trinity Term, 12. Geo. III.

Declaration in C. B. for words of felony.

MIDDLESEX, to wit. Richardſon, late of, &c. was attached to anſwer unto Allen in a plea of treſpaſs on the caſe, and thereupon the ſaid plaintiff, by A. B. by his attorney, complains, that whereas the ſaid plaintiff now is a good, true, honeſt, juſt, and faithful ſubject of this realm, and as ſuch a good, true, honeſt juſt, and faithful ſubject, always from the time of his nativity hitherto hath behaved, had, and governed himſelf, and hath always until the time of the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereafter mentioned to have been ſpoken and publiſhed by the ſaid defendant to, of, and concerning the ſaid plaintiff, been held, eſteemed, and reputed to be a perſon of good name, fame, credit, and reputation amongſt all his neighbours and other good and worthy ſubjects of this realm, and hath not ever been guilty, or, until the time of the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereafter mentioned, been ſuſpected to have been guilty of any felony, fraud, knavery, trickery, deceit, or falſehood, or of any other ſuch hurtful crime, by means whereof he the ſaid plaintiff, before the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereafter mentioned, had deſervedly obtained and acquired to himſelf the benevolence, and good opinion, and credit of all perſons any ways acquainted with him, and of divers good and worthy ſubjects of this realm to whom he was known, to wit, at Weſtminſter, in ſaid county of Middleſex; yet the ſaid defendant, well knowing the premiſes, but contriving and maliciouſly intending wrongfully and unjuſtly to hurt, prejudice, injure, and damnify the ſaid plaintiff in his aforeſaid good name,

fame, credit, and reputation, and to bring him into the public hatred, ſcandal, and ignominy amongſt all his neighbours and other good and worthy ſubjects of this realm to whom he was known, and to ſubject him to the pains and penalties by the laws and ſtatutes of this realm made and provided againſt thoſe who commit any kind of felony, larceny, fraud, trickery, cheating, or deceit, on the

Words in the third perſon.

day of A. D. , to wit, at, &c. aforeſaid, in a certain diſcourſe which the ſaid defendant then and there had with divers good and worthy ſubjects of this realm of and concerning the ſaid plaintiff, he the ſaid defendant then and there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed theſe falſe, ſcandalous, and defamatory words following of and concerning the ſaid plaintiff, in the preſence and hearing of thoſe ſubjects, that is to ſay, "He (meaning the ſaid plaintiff) is a thief, I (meaning himſelf the ſaid defendant) will call him (meaning the ſaid plaintiff) a thief, and I (again meaning himſelf the ſaid defendant) can prove him (again meaning the ſaid plaintiff)

2d Count.

one" (meaning a thief): And afterwards, to wit, on the ſame day and year aforeſaid, at Weſtminſter aforeſaid, in a certain other diſcourſe which the ſaid plaintiff then and there had with divers other good and worthy ſubjects of this kingdom of and concerning the ſaid plaintiff, he the ſaid defendant then and there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed theſe other falſe, ſcandalous, and defamatory words following, of and concerning the ſaid plaintiff, in the preſence and hearing of thoſe laſt-mentioned ſubjects, that is to ſay, "He (meaning the ſaid plaintiff) is as great a thief and gambler as any in the univerſe; he (again meaning the ſaid plaintiff) has been tried at the Old Bailey, and he (again meaning the ſaid plaintiff) ought to have

3d Count.

been hanged many years ago." 3d Count, "He (meaning plaintiff) is a thief, a rogue, and a gambler, and I (meaning himſelf the ſaid defendant) can prove him (again meaning the ſaid plaintiff) a thief, and it is in my (meaning his the ſaid defendant's) power to hang

4th Count.

him (again meaning the ſaid plaintiff). 4th Count, "He (meaning plaintiff) has defrauded a mealman of a roan horſe (thereby meaning that plaintiff had cheated and defrauded ſome perſon pro-

5th Count.

feſſing the buſineſs of a mealman of a roan horſe)." And whereas afterwards, to wit, on the ſame day and year aforeſaid, at, &c.

Words in the ſecond perſon.

aforeſaid, in a certain other diſcourſe which the ſaid defendant then and there had with the ſaid plaintiff in the preſence and hearing of divers other good and worthy ſubjects of this realm of and concerning the ſaid plaintiff, he the ſaid defendant then and there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed theſe other falſe, ſcandalous, and defamatory words following, to, of, and concerning the ſaid plaintiff, in the preſence and hearing of thoſe laſt-mentioned ſubjects, that is to ſay, "You (meaning the ſaid plaintiff) are a thief, a gambler, a rogue, and a villain; you (again meaning the ſaid plaintiff) ought to be hanged; you (again meaning the ſaid plaintiff) was tried at the Old Bailey, and it is in my (meaning his the ſaid defendant's)

power

power to hang you (again meaning the ſaid plaintiff)." 6th Count, "You (meaning the ſaid plaintiff) are a thief, a rogue, and a gambler, and I (meaning himſelf the ſaid defendant) can prove you (again meaning the plaintiff) a thief, and it is in my (meaning his the ſaid defendant's) power to hang you (again meaning the ſaid plaintiff." By means of the ſpeaking and publiſhing of which ſaid ſeveral falſe, ſcandalous, and defamatory words, the ſaid plaintiff is very much hurt, injured, prejudiced, and damnified in his aforeſaid good name, fame, credit, and reputation, and is fallen into public ſcandal, ignominy, and diſgrace amongſt all his neighbours and other good and worthy ſubjects, to whom the innocence and integrity of the ſaid plaintiff in the premiſes were unknown, inſomuch, that thoſe neighbours and ſubjects have always from the time of the ſpeaking and publiſhing of the ſaid words hitherto ſo vehemently ſuſpected the ſaid plaintiff to have been and to be a and a , that they have on that account always from thence hitherto wholly refuſed, and ſtill do daily more and more refuſe to have any commerce, acquaintance, or diſcourſe with him, or to have any thing to do with him as before they were accuſtomed to do, and would have done again had not thoſe words been ſpoken, to wit, at W. aforeſaid; wherefore the ſaid plaintiff ſaith he is injured, and hath ſuſtained damage to the value of two hundred pounds; and therefore he brings his ſuit, &c.

6th Count.

Conclusion.

The words.

SURRY, to wit. Elizabeth Beanch complains of Blackman Lyme, eſquire, being in the cuſtody, &c.; for that whereas the ſaid plaintiff now is a good, true, faithful, and honeſt ſubject of this kingdom, and, as ſuch a good, true, faithful, and honeſt ſubject, from the time of her nativity hitherto hath always behaved, had, and governed herſelf, and has always been eſteemed and reputed amongſt all her neighbours and other ſubjects of this kingdom to whom ſhe was known, to be a woman of good name, fame, and credit, and has always hitherto lived free, untouched, unſpotted, and wholly unſuſpected of and from all and all manner of perjury, knavery, trickery, deceit, or falſehood, or any other ſuch hurtful crime; by means whereof the ſaid plaintiff, before the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words, hereafter mentioned, had deſervedly obtained and acquired to herſelf the benevolence, good opinion, and credit of all perſons any ways acquainted with her, and of divers other good and worthy ſubjects of this kingdom; yet the ſaid defendant, well knowing the ſaid premiſes, but contriving and maliciouſly intending to hurt and injure the ſaid plaintiff in her good name, fame, and credit, and to wholly deſtroy the fame, and to bring her into public hatred, ſcandal, and ignominy, and to ſubject her to the pains and penalties by the laws and ſtatutes of this realm made and provided againſt thoſe who commit perjury, on the firſt day of November A.D. 1748, at Kingſton upon Thames, in the ſaid county of S. in

Declaration for R. for words of perjury.

a certain diſcourſe which the ſaid defendant then and there had with divers other good and worthy ſubjects of this realm of and concerning the ſaid plaintiff, he the ſaid defendant then and there falſely and malicioufly ſaid, rehearſed, proclaimed, and loudly publiſhed theſe falſe, ſcandalous, and defamatory words following, of and concerning the ſaid plaintiff, in the preſence and hearing of thoſe ſubjects, that is to ſay, &c. &c. &c. ; by means of the ſpeaking and publiſhing of which ſaid ſeveral falſe, ſcandalous, and defamatory words the ſaid plaintiff is greatly hurt, prejudiced, injured, and leſſened in her good name, fame, credit, and reputation, and is fallen into great ſcandal, ignominy, and reproach amongſt her neighbours and other good and worthy ſubjects of this kingdom, inſomuch that divers of thoſe ſubjects to whom the innocence and integrity of the ſaid plaintiff in the premiſes were unknown, have always from the time of the ſpeaking and publiſhing of the ſaid ſeveral falſe, ſcandalous, and defamatory words hitherto ſo vehemently ſuſpected the ſaid plaintiff to have been guilty of perjury, that they, on that account, have always ſince hitherto refuſed, and ſtill do more and more refuſe to have any converſation with her, or have any thing to do with her as before they were uſed and accuſtomed and would have done again, had not thoſe words been ſpoken, to wit, at Kingſton upon Thames aforeſaid, in the ſaid county of Surry, to the ſaid plaintiff her damage of five hundred pounds; and therefore ſhe brings ſuit, &c. Pledges, &c.

for of ſodomy.

FOR that whereas the ſaid plaintiff now is a good, true, chaſte, faithful, and honeſt ſubject of this kingdom, and as ſuch, from the time of his nativity hitherto, hath always behaved, had, and governed himſelf, and hath always until the time of the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereafter mentioned to have been ſpoken and publiſhed by the ſaid defendant to, of, and concerning the ſaid plaintiff, been held, eſteemed, reputed, accepted, and taken to be a perſon of good name, fame, credit, and reputation amongſt all his neighbours and other good and worthy ſubjects of this realm, and hath not ever been guilty, or until the time of ſpeaking, &c. [as before] been ſuſpected to have been guilty of that horrid and deteſtable crime, not fit to be named amongſt chriſtians, called ſodomy or buggery, or of any other ſuch enormous crime, by reaſon whereof the ſaid plaintiff, before the time of the ſpeaking, &c. had deſervedly obtained and procured to himſelf the benevolence, good opinion, and credit of all his neighbours, and divers other good and worthy ſubjects of this realm, to whom he was known; yet the ſaid defendant, well knowing all and ſingular the premiſes aforeſaid, but greatly envying the happy ſtate and condition of plaintiff, and contriving and malicioufly intending, wrongfully and unjuſtly, to injure him the ſaid plaintiff in his aforeſaid good name, fame, credit, and reputation, and to bring him into public ſcandal, reproach, and infamy amongſt all his neighbours and

divers

divers other good and worthy ſubjects of this kingdom, and alſo to ſubject him the ſaid plaintiff to the pains and puniſhments by the laws and ſtatutes of this realm made and provided againſt perſons guilty of the horrid and deteſtable crime called ſodomy or buggery, on the day of A. D. at, &c. in a certain diſcourſe which the ſaid defendant then and there had with the ſaid plaintiff, in the preſence and hearing of divers good and worthy ſubjects of this realm, he the ſaid defendant then and there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed theſe falſe, ſcandalous, and defamatory words following, to, of, and concerning the ſaid plaintiff, in the preſence and hearing of thoſe ſubjects, that is to ſay, &c. &c. &c.; by means of the ſpeaking and publiſhing of which ſaid ſeveral falſe, ſcandalous and defamatory words, to, of, and concerning the ſaid plaintiff, he the ſaid plaintiff is greatly hurt, injured, and prejudiced in his aforeſaid good name, &c. and is brought into public ſcandal, infamy, and diſgrace amongſt all his neighbours, and divers other good, &c. ſubjects of this kingdom, inſomuch that divers of thoſe neighbours and ſubjects, to whom the innocence of the ſaid plaintiff in the premiſes was unknown, have, on occaſion of the ſpeaking, &c. of thoſe words, from thence hitherto wholly refuſed, and ſtill do daily more and more refuſe to have any commerce, acquaintance, or diſcourſe with him, or to have any thing to do with him, as they before were accuſtomed to do, and would have done again, had not thoſe words been ſpoken; and the ſaid plaintiff is, on occaſion of the ſpeaking and publiſhing of thoſe words, otherwiſe greatly injured and damnified, to wit, at, &c.; damages, &c.; ſuit, &c.

Declaration for B. R. for words of inſolvency and bankruptcy, whereby defendant gained ſeveral of plaintiff's cuſtomers.

LONDON, to wit. William Holdſworth complains of —— Ruſhworth, being in the cuſtody, &c.; for that whereas he the ſaid plaintiff now is a good, true, honeſt, juſt, and faithful ſubject of this realm, and as ſuch hath always from his nativity hitherto behaved and governed himſelf, and until the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereafter ſpecified by the ſaid defendant of and concerning the ſaid plaintiff, he the ſaid plaintiff was always reputed, eſteemed, and accepted amongſt all his neighbours, and other good and worthy ſubjects of this realm to whom he was known, to be a perſon of good name, fame, credit, and reputation, to wit, at L. aforeſaid, in the pariſh of St. Mary-le-bow, in the ward of Cheap: And whereas before, and at the time of the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereafter ſpecified by the ſaid defendant of and concerning the ſaid plaintiff, he the ſaid plaintiff did uſe, exerciſe, follow, and carry on, and from thence hitherto hath uſed, exerciſed, followed, and carried on, and ſtill doth uſe, exerciſe, follow, and carry on the trade or buſineſs of an ink-maker, and dealer in, and ſeller of ink, during all the time aforeſaid, hath uſed, exerciſed, and followed, and carried on with honeſty and good credit, always well and faithfully keeping up his credit and days

of payment with all his creditors, and during all that time hath been ready, able, and willing to pay and diſcharge all his juſt debts by him from time to time contracted with all or any of his creditors in his trade aforeſaid, or otherwiſe; and hath never yet been, or until the time of the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereafter mentioned by the ſaid defendant of and concerning the ſaid plaintiff, been ſuſpected to have been guilty of any act of inſolvency, or of any act of bankruptcy, breaking, or becoming bankrupt or inſolvent; by means of which ſaid premiſes he the ſaid plaintiff, before the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereafter ſpecified by the ſaid defendant of and concerning the ſaid plaintiff, had deſervedly gained the good opinion and credit of all his neighbours, and other good and worthy ſubjects of this realm to whom he was known, and alſo duly and honeſtly acquired ſundry great gains and profits in his aforeſaid buſineſs to the very comfortable ſupport of himſelf and his family, and to the great increaſe of his riches, to wit, at L. &c. *aforeſaid*; yet the ſaid defendant, well knowing all and ſingular the premiſes aforeſaid, but contriving and maliciouſly intending, wrongfully and unjuſtly to injure the ſaid plaintiff in his aforeſaid good name, fame, credit, and reputation, and in his buſineſs aforeſaid, and to cauſe him to be brought into public ſcandal, infamy, and diſgrace, and to be eſteemed and ſuſpected to be a bankrupt and an inſolvent perſon, and a perſon not capable to pay or diſcharge his juſt debts, and to ſubject him to the laws and ſtatutes of this realm now in force concerning bankrupts and inſolvent perſons, heretofore, to

About the time. wit, on the day of in A. D. 1771, at L. &c. aforeſaid, in a certain diſcourſe which he the ſaid defendant then and there had with divers good and worthy ſubjects of this realm, who were cuſtomers of and dealers with the ſaid plaintiff in the way of his aforeſaid buſineſs, of and concerning the ſaid plaintiff in his buſineſs, he the ſaid defendant then and there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed, of and concerning the ſaid plaintiff in his aforeſaid buſineſs, in the preſence and hearing of thoſe ſubjects, theſe falſe, ſcandalous, and defamatory

2d Count, words ſpoken to a creditor of the plaintiff's. words following, that is to ſay, "He (meaning the ſaid plaintiff) has been arreſted, and is inſolvent:" And afterwards, to wit, on the ſame day and year aforeſaid, at, &c. aforeſaid, in a certain other diſcourſe which the ſaid defendant then and there had with one ——, (being a perſon of whom the ſaid plaintiff was uſed and accuſtomed to buy divers goods and merchandizes in the way of his ſaid buſineſs, upon credit, and without ready money, and to whom the ſaid plaintiff then ſtood indebted in a certain ſum of money, to wit, the ſum of pounds, for divers goods, wares, and merchandizes, which the ſaid plaintiff had before that time bought of the ſaid on credit, and which ſaid ſum of money he the ſaid plaintiff, at the time of the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereafter next-mentioned, was able, and ready, and willing to pay to the ſaid) in the preſence

preſence and hearing of divers good and worthy ſubjects of this realm of and concerning the ſaid plaintiff in his buſineſs aforeſaid, he the ſaid defendant then and there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed to the ſaid , of and concerning the ſaid plaintiff in his aforeſaid buſineſs, in the preſence and hearing of thoſe laſt-mentioned ſubjects, theſe other falſe, ſcandalous, and defamatory words following, that is to ſay, "It is better to get goods from him (meaning from the ſaid plaintiff) as there is no money to be had (meaning thereby that plaintiff was inſolvent), and thereby you (meaning the ſaid) may get fifteen ſhillings in the pound for your (meaning the ſaid 's) debt (meaning the aforeſaid debt), otherwiſe you (again meaning the ſaid) will not have five ſhillings in the pound" (meaning thereby that the ſaid plaintiff was inſolvent, and unable to pay to the ſaid five ſhillings in the pound of the debt he owed him:) And afterwards, to wit, on the ſame day and year aforeſaid, at, &c. aforeſaid, in a certain other diſcourſe which he the ſaid defendant then and there had with divers other good and worthy ſubjects of this realm, of whom the ſaid plaintiff was uſed and accuſtomed to buy divers goods and merchandizes in the way of his aforeſaid buſineſs, upon credit, and without ready money, of and concerning the ſaid plaintiff in his buſineſs aforeſaid; and the ſaid defendant then there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed, of and concerning the ſaid plaintiff in his aforeſaid buſineſs, in the preſence and hearing of thoſe laſt-mentioned ſubjects, theſe other falſe, ſcandalous, and defamatory words following, that is to ſay, "He (meaning the ſaid plaintiff) is inſolvent and a bankrupt." [4th Count, "He is inſolvent"]; by means of the ſpeaking and publiſhing of which ſaid ſeveral words he the ſaid plaintiff is greatly injured in his aforeſaid good name, fame, credit, and reputation, and in his buſineſs aforeſaid, and is brought into public ſcandal, infamy, and diſgrace amongſt all his neighbours and other good and worthy ſubjects of this realm, to whom he was known, inſomuch that many of thoſe neighbours and ſubjects, to whom the innocence and integrity of the ſaid plaintiff in the premiſes were unknown, have, on occaſion of the ſpeaking and publiſhing of the ſaid ſeveral words, from thence hitherto ſuſpected, and ſtill do ſuſpect the ſaid plaintiff to have been and to be an inſolvent perſon, and a perſon not capable or able to pay or diſcharge his juſt debts by him contracted, and to be a bankrupt; and alſo on occaſion of the premiſes aforeſaid, divers good and worthy ſubjects of this realm, of whom the ſaid plaintiff was uſed and accuſtomed to buy divers goods and merchandizes in the way of his aforeſaid buſineſs, upon credit, and without ready money, have, ſince the ſpeaking and publiſhing of the ſaid ſeveral words, wholly refuſed to give him any credit, or to ſell him any goods or merchandizes without ready money, and the ſaid plaintiff is otherwiſe greatly injured, to wit, at London, &c. aforeſaid: *And whereas* the ſaid plaintiff, long before and at the time of the committing of the grievance hereafter next mentioned, did uſe, exerciſe,

3d Count.

4th Count.

exerciſe, follow, and carry on, and from thence hitherto hath uſed, exerciſed, followed, and carried on, and ſtill doth uſe, exerciſe, follow, and carry on the art, trade, or buſineſs of an ink-maker, and a dealer in and ſeller of ink, and during all that time hath uſed, exerciſed, followed, and carried on, and ſtill doth uſe, exerciſe, and carry on the ſaid buſineſs by himſelf only, and in his own right and name, without having any partner or joint adventurer, or being in partnerſhip or a joint dealer with the ſaid defendant or any other perſon or perſons whatſoever, to wit, at L. &c. aforeſaid: And whereas long before, and at the time of the committing of the grievance hereafter next-mentioned, the ſaid defendant did uſe, exerciſe, follow, and carry on the trade and buſineſs of an ink-maker, and dealer in and ſeller of ink, and as ſuch was uſed and accuſtomed to ſell ink for and on his own account, and for his own fair profit, and not for or on account of, or for the gain, profit, benefit, or advantage of the ſaid plaintiff, or in partnerſhip with him the ſaid plaintiff, to wit, at L. aforeſaid: And whereas before and at the time of the committing the grievance hereafter next-mentioned, one was a cuſtomer of him the ſaid plaintiff in the way of his aforeſaid trade and buſineſs, and was uſed and accuſtomed to buy ink of the ſaid plaintiff, in the way of his ſaid trade or buſineſs aforeſaid, and the ſaid plaintiff was by ſuch ſale of ink to the ſaid , uſed and accuſtomed honeſtly to acquire and gain a certain reaſonable profit and advantage, to wit, at L. aforeſaid; yet the ſaid defendant, well knowing all and ſingular the premiſes, but contriving and maliciouſly intending, wrongfully and unjuſtly to injure the ſaid plaintiff in his buſineſs aforeſaid, and to deprive him of the cuſtom of the ſaid , and of the ſale of his ink, and to the ſaid , and of the profits of the ſale thereof, and to reap an unjuſt profit and advantage to himſelf the ſaid defendant, he the ſaid defendant, whilſt the ſaid was ſuch cuſtomer of the ſaid plaintiff heretofore, to wit, on the day of , in the year aforeſaid, at London, &c. aforeſaid, falſely, deceitfully, wrongfully and unjuſtly inſinuated and pretended unto the ſaid , ſo being the cuſtomer of the ſaid plaintiff, and who was ſo uſed and accuſtomed to deal with the ſaid plaintiff, to buy ink of him in the way of his aforeſaid buſineſs, that he the ſaid defendant was a partner with the ſaid plaintiff in the way of his aforeſaid buſineſs, and then and there requeſted the ſaid to give him an order for, and to buy ink of him the ſaid defendant, as being a partner with the ſaid plaintiff; and by means of ſuch falſe inſinuation and pretence the ſaid defendant then and there wrongfully and deceitfully obtained and received orders from the ſaid , ſo being a cuſtomer of the ſaid plaintiff, for the ſale of a certain quantity of ink, to wit, gallons of ink, on a ſuppoſition that the ſaid defendant was in reality a partner with the ſaid plaintiff, and did afterwards, to wit, on the day and year laſt aforeſaid, at L. &c. aforeſaid, wrongfully and deceitfully get to himſelf the ſale of the ſaid ink, and did then and there ſell the ſame to the ſaid , ſo being a cuſtomer of the ſaid plaintiff, as if he the ſaid defendant then was, and under the pretence that he the ſaid defendant then was the partner of

the ſaid plaintiff for a certain ſum of money, to wit, the ſum of pounds, and then and there wrongfully and deceitfully procured and got to himſelf the receipt of the ſaid money for the ſame, whereby the ſaid plaintiff was then and there greatly injured in his trade and buſineſs to the ſaid , and thereby loſt and was deprived of the profit he might and would have got by the ſale of a like quantity of ink to the ſaid , to wit, at L. &c. aforeſaid, to the ſaid plaintiff his damage of five hundred pounds; and therefore he brings his ſuit, &c. Pledges, &c.

Declaration againſt *huſband and wife, for words ſpoken by* defendant's wife of a *woman* (French pox), *whereby marriage loſt*.

MIDDLESEX, to wit. M. O. widow, complains of D. B. and E. his wife, being in the cuſtody, &c.: for that whereas the French pox always was, and ſtill is eſteemed among all perſons a diſeaſe ſo naſty, contagious, infectious, and deteſtable, inſomuch that every one avoids the company and converſation of ſuch perſons who are infected with that putrid and deteſtable diſtemper, or who are ſaid or reputed to be infected and tainted therewith, and alſo altogether refuſe and abhor to have any commerce or fellowſhip, or to eat or drink with, or to have any thing to do with ſuch perſon infected, or reputed to be infected and tainted with that loathſome diſtemper: And whereas ſaid Margaret now is a good, true, pious, chaſte, modeſt, and honeſt ſubject of this realm, and as ſuch a good, &c. from the time of her nativity hitherto hath always behaved, had, and governed herſelf, and at the time of the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereafter mentioned to have been ſpoken and publiſhed by the ſaid Elizabeth of and concerning the ſaid Margaret, was, and for a long time then laſt paſt had been, and ſtill is a ſingle and unmarried woman, and has always until, &c. been ſaid, held, and reputed to be a woman of good name, fame, credit, reputation, converſation, and behaviour amongſt all her neighbours and other good and worthy ſubjects of this kingdom, without committing, and until the time of the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereafter mentioned to have been ſpoken and publiſhed by the ſaid Elizabeth of and concerning the ſaid Margaret, without ſuſpicion of committing of any *kind of unchaſtity, fornication, adultery, whoredom, carnal knowledge of any man whatſoever except of Owen, her late huſband, who long before the ſpeaking and publiſhing of the ſaid words, was deceaſed, or of any other ſuch hurtful or obnoxious crime, and has hitherto lived free from, untouched, and untainted with the French pox, and all other ſuch naſty, infectious, and poiſonous diſtempers, and until the time of the ſpeaking, &c. of the ſaid ſeveral falſe, &c. hath lived and continued unſuſpected of being tainted or infected with the ſaid diſtemper, or with any other ſuch naſty and poiſonous diſeaſe*; and by reaſon thereof the the ſaid M. has been not only uſed to poſſeſs and enjoy the company, converſation, and ſociety of her friends, neighbours, and companions, and of all other good and faithful ſubjects of this realm, to whom

Qu. If neceſſary? Or, if defendants dare put it in iſſue.

whom ſhe was known, to the very comfortable ſupport of her life, and had alſo deſervedly obtained and got to herſelf the benevolence, good opinion, and credit of all her neighbours and friends; *but alſo by means thereof one Winter, a man of conſiderable eſtate and great wealth, who was then, and for a long time after the ſpeaking, &c. of the ſeveral falſe, &c. words hereafter mentioned, a ſingle and unmarried man, and the ſaid M. had and bore a great love, friendſhip, eſteem, and kindneſs for him the ſaid Winter, and was very deſirous to marry with, and be joined in wedlock to him the ſaid W.; and thereupon the ſaid M. and W. had divers meetings, and many diſcourſes together about the marriage to be ſolemnized between them, inſomuch that by means of theſe meetings and diſcourſes a marriage was very near and likely to have been concluded, and would have been concluded between them, whereby ſhe the ſaid M. would have been preferred to a much more wealthy, happy, agreeable, and comfortable ſtate and condition of life*; nevertheleſs the ſaid E. the wife of the ſaid D. well knowing the premiſes, but contriving and maliciouſly intending to hurt, prejudice, and entirely to degrade her the ſaid Margaret in her good name, fame, credit, and reputation, and to make and cauſe her to be brought into diſgrace, infamy, and public ſcandal amongſt all her neighbours, and to cauſe her to be eſteemed, accepted, and reputed to be an incontinent, unchaſte, and immodeſt perſon, and a woman tainted with the French pox, and by reaſon thereof not only to make her neighbours, friends, and other perſons to whom ſhe ever was known to abhor and deteſt her, and to withdraw themſelves from her company and converſation, *but alſo to make the ſaid Winter abhor and deteſt her the ſaid Margaret, and withdraw himſelf from her company and converſation, and thereby prevent and hinder the ſaid intended marriage between the ſaid Margaret and Winter from taking effect*, on the

Any day about the time, but the very day is not material.

day of A. D. at Weſtminſter, in the county of Middleſex aforeſaid, in a certain diſcourſe which the ſaid Elizabeth, the wife of the ſaid D. then and there had with divers good and worthy ſubjects of this realm, of and concerning the ſaid M. ſhe the ſaid E. then and there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed theſe falſe, ſcandalous, and defamatory words following, of and concerning the ſaid M. in the preſence and hearing of thoſe ſubjects, that is to ſay, "She (meaning the ſaid M.) is a naſty, rotten, ſtinking whore (meaning that ſhe the ſaid M. was a whore, and rotten with the French pox), and was the death of Mr. Payne (meaning one Payne, who was then lately deceaſed), by poxing him" (meaning by giving to the ſaid Payne the diſeaſe called the French pox): And whereas, &c. [there were a number of Counts upon other words]; by means of the ſpeaking, &c. of the ſaid ſeveral falſe, ſcandalous, and defamatory words, ſhe the ſaid M. is greatly hurt, injured, and damnified in her aforeſaid good name, fame, credit, and reputation, and is brought into public ſcandal,

ignominy, hatred, contempt, and diſgrace, and ever ſince the ſpeaking, &c. of the ſaid words, hitherto hath been and ſtill is accepted and reputed to be a libidinous, unchaſte, and immodeſt perſon, and a perſon tainted, infected, and rotten with the French pox, and divers of her neighbours and friends, with whom the ſaid Margaret was uſed to aſſociate herſelf, and who uſed to have converſation with her, and to keep her company, have avoided, ſhunned, and abhorred her as a perſon infected with the French pox, and have from time to time ever ſince the ſpeaking and publiſhing of the ſaid ſeveral words, hitherto refuſed and deſiſted, and ſtill do daily refuſe and deſiſt from having any converſation with her, or having any thing to do with her, or keeping her company as before they were uſed and accuſtomed to do, and would have done again, had not thoſe words been ſpoken, *and the ſaid Winter hath ever ſince the ſaid ſpeaking and publiſhing of the ſaid ſeveral words hitherto ſhunned and abhorred the ſaid Margaret, and wholly refuſed ever to marry the ſaid Margaret, whereby the ſaid Margaret hath loſt all the wealth and preferment, comfort, and happineſs which ſhe the ſaid M. would otherwiſe have gained by the ſaid intended marriage with the ſaid Winter*, to wit, at Weſtminſter aforeſaid.: And whereas the French pox always was, and ſtill is eſteemed amongſt all perſons a diſeaſe ſo nafty, &c. [Another ſet of Counts, *without taking any notice of Winter, or of the intended marriage*, becauſe plaintiff's attorney was not certain that Winter diſcontinued his addreſſes on account of thoſe words].

BUCKS, to wit. N. S. complains of H. D. being, &c.: for that whereas the ſaid N. now is a good, true, honeſt, juſt, and faithful ſubject, and as ſuch a good, &c. hath always from his nativity hitherto behaved and governed himſelf and at the time of the ſpeaking, &c. for a long time then next following, was a ſingle and unmarried man, and until, &c. hath always been reputed and accepted amongſt all his neighbours, and other good and worthy ſubjects of this realm, to be a perſon of good name, fame, and credit, to wit, at Winſlow, in the county aforeſaid: And whereas he the ſaid N. hath not ever been guilty of any fraud, deceit, or falſehood, or of any other ſuch hurtful crime, by means whereof he the ſaid N. before the ſpeaking, &c. gained the good opinion, credit, favour, and benevolence of all his neighbours, and of other good and worthy ſubjects of this realm; and alſo by means thereof one P woman of conſiderable eſtate and wealth, who then, and for a long time after the ſpeaking, &c. was a ſingle and unmarried woman, had and bore a great love, friendſhip, eſteem, and kindneſs for and towards the ſaid N. and had a great deſire and inclination to contract herſelf to the ſaid N. in wedlock, and to take him to her huſband, and he the ſaid N. had alſo a great love, &c. for her the ſaid E. P. and was very deſirous to be married and joined in wedlock to her the ſaid E. P.; and thereupon the ſaid N. and E. P. had divers meetings and

Declaration for words ſpoken of a man, by which *plaintiff loſt the marriage* of one woman, and having afterwards married another, her father would give her marriage portion.

and many diſcourſes together about a marriage to be had and ſolemnized between them, inſomuch that by means of thoſe meetings and diſcourſes a marriage was very near and likely to have been concluded, and would have been concluded between them, whereby the ſaid N. would have been preferred to a much more wealthy and happy ſtate and condition of life, to wit, at Weſtminſter aforeſaid; yet the ſaid H. well knowing all and ſingular the premiſes aforeſaid, but greatly envying the happineſs of the ſaid N. and contriving and maliciouſly intending wrongfully and unjuſtly to prejudice, degrade, and injure the ſaid N. in his aforeſaid good name, fame, credit, and reputation, and to cauſe him to be brought into public ſcandal, infamy, and diſgrace, and to make the ſaid E. P. abhor and deteſt the ſaid N. and to withdraw herſelf from his company and converſation, and thereby to prevent and hinder the ſaid intended marriage between the ſaid E. P. and H. from taking effect heretofore, to wit, on, &c. at, &c. aforeſaid, in a certain diſcourſe which the ſaid H. then and there had with the ſaid N. in the preſence and hearing of divers good and worthy ſubjects of this realm, of and concerning ſaid N. ſhe the ſaid H. then and there falſely, &c. ſaid, &c. of and concerning ſaid H. in the preſence and hearing of thoſe ſubjects, theſe falſe, &c. words following, that is to ſay, &c.: And afterwards, to wit, on ſame day and year aforeſaid, in a certain other diſcourſe which ſaid H. then and there had with divers other good, &c &c. [as before, adding as many Counts forwards as are neceſſary]: And afterwards, on ſame day and year, &c. aforeſaid, the ſaid H. of her further malice towards ſaid N. in the preſence and hearing of divers other good, &c. &c. falſely, &c. reported, aſſerted, declared, and publiſhed of and concerning the ſaid N. that the ſaid N. &c. &c. &c. by means of the ſpeaking and publiſhing of which ſaid ſeveral falſe, &c. words by the ſaid H. of and concerning ſaid N. he ſaid N. is not only greatly hurt, injured, prejudiced, and degraded in his aforeſaid good name, &c. and brought into public ſcandal, infamy, and diſgrace, but alſo by reaſon of the ſpeaking, &c. and of the reporting, aſſerting, publiſhing, and declaring of the matter ſo reported as aforeſaid, the ſaid E. P. hath from thence hitherto ſhunned and abhorred ſaid N. and wholly refuſed ever to marry him ſaid N. whereby ſaid N. hath loſt all the happineſs, wealth, and preferment which he ſaid N. would otherwiſe have gained by ſaid intended marriage with ſaid E. P. to wit, at, &c. aforeſaid: And whereas ſaid N. now is, and for his lifetime has hitherto been a man of good name, fame, and credit, and as ſuch was always until the committing of the grievance hereafter mentioned, reputed and eſteemed amongſt all his neighbours, and other good and worthy ſubjects of this realm, to whom he was in any wiſe known: And whereas the ſaid N. on, &c. at, &c. aforeſaid, intermarried with and took to his wife one S. S. the daughter of one T. S. of, &c. who, at the time of the ſaid marriage, was, and from thence hitherto hath been, and ſtill is a man of great wealth and riches,

Gravamen.

Colloquium.

Count.

and

and who, during all that time, was capable to give, and who, had it not been for the grievance hereafter mentioned, would have given to the ſaid N. a large ſum of money and other effects as a marriage portion with the ſaid S. S. to the ſaid N. and the ſaid N. on that marriage was, and from thence until the grievance hereafter mentioned, hath been taken and had in great eſteem, love, and friendſhip by the ſaid T. S. *and the ſaid* N. *never was married to the ſaid* H. *or to any woman whomſoever, other than and except to the ſaid S. S. to wit, at, &c. aforeſaid*; yet the ſaid H. well knowing the premiſes, but contriving falſely and maliciouſly intending wrongly and unjuſtly to injure the ſaid N. afterwards, to wit, on, &c. at, &c. aforeſaid, in the preſence and hearing of divers other good and worthy ſubjects of this realm, falſely and maliciouſly reported, &c. of and concerning ſaid N. that, &c. by means whereof ſaid N. is greatly prejudiced in his credit and reputation, and the ſaid T. S. on occaſion of the premiſes, hath, ever ſince the committing of the ſaid grievance, hitherto abhorred, ſhunned, and deteſted the ſaid N. and refuſed to permit, and ſtill doth daily more and more refuſe to permit the ſaid N. or his ſaid wife, to keep him company, or to be with or viſit him, and hath alſo wholly refuſed, and ſtill refuſes to give any marriage portion to the ſaid N. with the ſaid S. S. which he otherwiſe would have done, and the ſaid N. is alſo otherwiſe greatly injured and damnified, to wit, at, &c. aforeſaid. Damages, &c. Suit, &c. Pledges, &c.

To be agreeable to the caſe.

MIDDLESEX, to wit. John, earl of Sandwich, one of the peers and great men of this realm of Great Britain, who proſecutes in this behalf as well for our ſovereign lord the king as for himſelf, complains againſt John Millar being in the cuſtody, &c.; for that whereas *at the time of deviſing*, ſpeaking, telling, printing, and publiſhing of the falſe, ſcandalous, malicious, and defamatory libel hereinafter next mentioned, the ſaid earl was a peer of this realm of Great Britain, and one of the privy council of our ſaid preſent lord the king, and firſt commiſſioner for executing the office of high admiral of Great Britain, that is to ſay, at Weſtminſter, in the county of Middleſex aforeſaid; yet the ſaid John Millar, not regarding the ſtatute in that caſe made and provided, but contriving and maliciouſly intending to draw and bring the ſaid earl into diſgrace, contempt, and ignominy with the lord the now king, and the peers and great men of this realm, and to cauſe to be believed that the ſaid earl had acted corruptly in his ſaid office of firſt commiſſioner for executing the ſaid office of high admiral, and had put up offices in the navy to public ſale, and to inſinuate and cauſe it to be believed that the office of commiſſary

Declaration * for *ſcandalum magnatum* of the firſt lord of the admiralty in his office, by way of libel in a public newſpaper.

* Puniſhable by impriſonment, and thatby Wil. 1. c. 34. as well as rendering damages to the perſon injured, to be recovered in an action founded upon 2. Rich. 2. *tam pro domino rege quam pro ſe ipſo.*

of

of the navy, being an office of great importance and truſt in the navy, had been offered to ſale, and actually ſold by the ſaid earl, ſo being the firſt commiſſioner for executing the office of high admiral as aforeſaid, on the ſecond day of February A. D. 1773, at Weſtminſter aforeſaid, in the county aforeſaid, in a certain newſpaper entitled The London Evening Poſt, from Saturday, January the thirtieth, to Tueſday, February the ſecond, 1773 [No. 7033] falſely and maliciouſly did deviſe, ſpeak, tell, print, and publiſh divers falſe, ſcandalous, and horrible lies concerning ſaid earl, and alſo concerning him as firſt commiſſioner for executing the ſaid office of high admiral, according to the tenor following, that is to ſay, for the London Evening Poſt.—To Lord Sandwich (meaning the ſaid earl). My lord, &c. &c. [Here ſet forth the libel, with proper inuendoes]; 2d Count, did publiſh, and cauſe to be publiſhed; 3d Count, deviſe and publiſh, and cauſe to be publiſhed, by reaſon of the deviſing, ſpeaking, telling, printing, and publiſhing of which ſaid falſe, ſcandalous, malicious, and defamatory libel firſt-mentioned, and publiſhing of which ſaid falſe, &c. libel ſecondly mentioned, and deviſing and publiſhing of which ſaid falſe, &c. libel laſt-mentioned, containing the ſaid falſe, ſcandalous, and horrible lies above-mentioned, divers rumours and ſcandals have ariſen againſt the ſaid earl, and great ſcandals and diſcords within this realm amongſt the great men of the ſaid realm have ariſen therefrom, and may and are likely to ariſe every day more and more, to the great diſturbance of the public tranquillity of the ſaid realm, to the contempt of our lord the now king, and againſt the form of the ſtatute in ſuch caſe made and provided, to the damage of the ſaid earl of ten thouſand pounds; and therefore as well for our ſaid lord the king as for himſelf he brings ſuit, &c.; pledges, &c.

N B. It muſt be ſhewn, that the plaintiff was *unus magnatum* at the time of the ſpeaking, &c. or the action will not be maintainable, 4. Co. 12. 13. Cro. Car. 135.

This cauſe was tried, and a verdict found for plaintiff with three thouſand pounds damages.

In Common Pleas. Trinity Term, 17. Geo. III.

Declaration for *words of arſon*, and alſo for taking plaintiff up for ſaid crime, and carrying him before juſtice of the peace, who diſcharged, whereby plaintiff loſt his inſurance.

JOHN ROUTLEDGE *againſt* ROGER EVANS. } FOR that whereas the ſaid plaintiff now is a good, true, honeſt, juſt, and faithful ſubject of this realm, and as ſuch hath always from his nativity hitherto behaved and governed himſelf, and until the time of the committing of the grievance hereafter next mentioned, and of the ſpeaking and publiſhing of the ſeveral falſe, feigned, ſcandalous, opprobrious, and malicious words hereinafter mentioned by ſaid defendant, of and concerning ſaid plaintiff, was always eſteemed, reputed, and accepted amongſt all his neighbours and other good and worthy ſubjects of this realm to be a perſon of good name, fame, and credit, to wit, at the pariſh of St Paul, Shadwell, in the county of Middleſex aforeſaid: And whereas ſaid plaintiff,

plaintiff, before and on the ſeventeenth of March A. D. 1771, and alſo before the committing of the grievance hereafter next mentioned, and the ſpeaking, &c. of the ſeveral falſe, &c. words hereinafter mentioned by ſaid defendant of and concerning ſaid plaintiff, to wit, at, &c. aforeſaid, was lawfully poſſeſſed of and in a certain meſſuage or dwelling-houſe, ſituate, ſtanding, and being in the pariſh of St. Paul, Shadwell, aforeſaid, and alſo of and in a certain ſtock in trade, houſehold furniture, and other property of him the ſaid plaintiff to a large amount there, to wit, on the ſame day and year, at the pariſh of, &c. aforeſaid, ſtored and being in ſaid meſſuage or dwelling-houſe of ſaid plaintiff, to wit, at the pariſh of, &c. aforeſaid: And whereas ſaid ſtock in trade, houſehold furniture, and other property of him the ſaid plaintiff ſo as aforeſaid being in the ſaid meſſuage, &c. of ſaid plaintiff, were, before and on the ſame day and year, to wit, at, &c. aforeſaid, duly inſured by him ſaid plaintiff from loſs or damage by fire in a certain ſociety or office commonly called *The Sun Fire Office in London*, to the amount of the true value thereof, to wit, at, &c. aforeſaid: And whereas the ſaid plaintiff being ſo as aforeſaid poſſeſſed of and in ſaid meſſuage or, &c. and of and in the ſaid ſtock in trade, houſehold furniture, and other property of him ſaid plaintiff as aforeſaid ſtored and being therein, and the ſame ſtock in trade, houſehold furniture, and other the property of ſaid plaintiff being ſo inſured as aforeſaid, whilſt he the ſaid plaintiff was ſo as aforeſaid poſſeſſed of the ſaid ſeveral premiſes, and whilſt ſaid ſtock in trade, furniture, and other property of ſaid plaintiff in ſaid meſſuage of ſaid plaintiff being as aforeſaid, were ſo inſured as aforeſaid, to wit, on ſame day and year, at, &c. aforeſaid, not only ſaid meſſuage or dwelling-houſe of ſaid plaintiff was by mere accident and unavoidable misfortune then and there much and greatly damaged by fire, but the ſaid ſtock in trade, houſehold furniture, and other property of him ſaid plaintiff ſo as aforeſaid inſured, were then and there alſo by mere accident and unavoidable misfortune wholly burnt and conſumed by fire, to wit, at, &c. aforeſaid: And whereas ſaid plaintiff, by means of his ſaid ſtock in trade, houſehold and other property ſo inſured as aforeſaid being burnt and conſumed by fire as aforeſaid, did ſuffer a damage or loſs to the amount or ſum of ſix hundred and fifty-one pounds ſix ſhillings and tenpence of lawful money of Great Britain, by means whereof the ſtock and fund of the ſaid ſociety was ſubject and liable to pay to ſaid plaintiff, and ſaid plaintiff thereby became and was legally and juſtly intitled to receive of and from the ſaid ſociety or office the ſum of, &c. of lawful, &c. being the true and real amount of ſuch his ſaid damage or loſs as aforeſaid, to wit, at, &c.: And whereas ſaid plaintiff hath not ever been guilty, or until the time of committing the grievance hereafter next mentioned, and of the ſpeaking, &c. of the ſeveral falſe, &c. words hereinafter mentioned by ſaid defendant of and concerning ſaid plaintiff, been ſuſpected to have been guilty of arſon, burning of houſes, felony, or fraud, or of any other ſuch hurtful crime, by means of which ſaid

ſeveral premiſes he the ſaid plaintiff had before the committing, &c. alſo before the ſpeaking, &c. deſervedly obtained the benevolence, good opinion, and credit of all his neighbours, and of divers other good and worthy ſubjects of this realm to whom he was in any wiſe known, to wit, at, &c. aforeſaid; yet ſaid defendant, well knowing all and ſingular the premiſes, but greatly envying the happy ſtate and condition of ſaid plaintiff, and contriving and maliciouſly intending wrongfully and unjuſtly not only to injure ſaid plaintiff in his aforeſaid good name, fame, credit, and reputation, and to bring him into public ſcandal, infamy, and diſgrace, and to make it to be credited and believed that the ſaid plaintiff was and is a perſon guilty of arſon, felony, and fraud, and to ſubject him to the pains and penalties by the laws of this realm made and provided againſt and inflicted on perſons guilty of arſon, but alſo to make it be credited and believed that ſaid plaintiff had been and was at the time the ſaid fire ſo happened as aforeſaid, inſured at a much larger ſum of money than his ſaid ſtock in trade, houſehold furniture, and other property of him ſaid plaintiff which had been and was ſo inſured, and had been and was ſo burnt and conſumed as aforeſaid were juſtly worth, and that ſaid plaintiff had feloniouſly, voluntarily, and maliciouſly ſet fire to his ſaid meſſuage or, &c. with intent to burn and conſume the ſame, and that ſaid plaintiff had feloniouſly, voluntarily, and maliciouſly burnt and conſumed his ſaid ſtock in trade, houſehold furniture, and other property of him ſaid plaintiff ſo therein being as aforeſaid, with an intent, and in order and on purpoſe to cheat and defraud the ſaid ſociety or office of a large ſum of money beyond and more than the juſt and true value thereof, and to prevent and hinder ſaid plaintiff from reaping any benefit from his ſaid aſſurance, and from receiving or being paid by ſaid ſociety or office ſaid damage or loſs of, &c. which he ſaid plaintiff ſo as aforeſaid ſuſtained, by the means, and on account of ſaid fire, and againſt which he was ſo inſured as aforeſaid, *and to diſquiet ſaid plaintiff, and to make him ſuffer and undergo many arduous labours and troubles both of body and mind, and to impoveriſh and wholly ruin him therefore, to wit, on the twentieth of March A. D. 1777 aforeſaid, to wit, at, &c. aforeſaid, falſely and maliciouſly, and without any reaſonable or probable cauſe whatſoever, made a complaint againſt ſaid plaintiff before J. S. eſquire, then and now being one of the juſtices of our lord the now king aſſigned to keep the peace of our ſaid lord the king in and for the county of Middleſex, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed in the ſaid county, and then and there charged and accuſed him ſaid plaintiff with, and impoſed on him the crime of felony, to wit, with having feloniouſly, wilfully, and maliciouſly ſet fire to his ſaid meſſuage, &c. and then and there upon ſaid complaint ſo as aforeſaid falſely, &c. made by ſaid defendant againſt ſaid plaintiff as aforeſaid, forced and obliged ſaid plaintiff to come and appear, and the ſaid plaintiff was thereby then and there convened and obliged to appear, and did then and there appear before the ſaid juſtice to anſwer the premiſes ſo as aforeſaid falſely*

falſely and maliciouſly laid to his charge, and ſaid defendant alſo then and there, to wit, on the day and year laſt aforeſaid, at, &c. aforeſaid, falſely, &c. and without any, &c. cauſed and procured ſaid plaintiff to be examined by and before ſaid juſtice, of and upon touching and concerning ſaid crime ſo as aforeſaid falſely, &c. laid to his charge, and alledged againſt him, and to be kept and detained in cuſtody under ſuch examination for a long ſpace of time, to wit, for the ſpace of twelve hours then next following, under colour and pretence of the ſaid ſuppoſed crime, when in truth and in fact ſaid plaintiff was not, nor is in anywiſe guilty of the felony and premiſes ſo as aforeſaid falſely, &c. by ſaid defendant alledged againſt him ſaid plaintiff, and ſo it then and there fully appeared on ſaid examination aforeſaid of ſaid plaintiff to ſaid J. S. eſquire, ſo being ſuch juſtice as aforeſaid; whereupon ſaid J. S. eſquire being ſuch juſtice as aforeſaid upon ſaid examination of ſaid plaintiff, and after he had fully heard and conſidered every thing that ſaid defendant could ſay or alledge againſt him ſaid plaintiff touching ſaid ſuppoſed crime, to wit, on the day, &c. aforeſaid, at, &c. aforeſaid, wholly acquitted and diſcharged ſaid John of and from ſaid ſuppoſed crime, to wit, at, &c. aforeſaid: And ſaid defendant contriving and maliciouſly intending as aforeſaid heretofore, on the eighteenth of March A. D. 1777 aforeſaid, to wit, at, &c. aforeſaid, in a certain diſcourſe which he ſaid defendant then and there had with divers good and worthy ſubjects of this realm, of and concerning ſaid plaintiff, and of and concerning ſaid fire that had ſo as aforeſaid accidentally happened in his ſaid meſſuage or, &c. he ſaid defendant then and there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed of and concerning ſaid plaintiff, in the preſence and hearing of theſe ſubjects, theſe falſe, &c. words following, that is to ſay, "Here is a fine piece of work (meaning and alluding to ſaid fire that had ſo as aforeſaid accidentally happened in ſaid meſſuage, &c. of ſaid plaintiff); unleſs we appear againſt this man (meaning ſaid plaintiff) we ſhall not be able to ſleep ſafe in our beds" (thereby then and there meaning and inſinuating that plaintiff had and did feloniouſly &c. ſet fire to his ſaid houſe, and had feloniouſly, &c. burnt and conſumed ſaid ſtock in trade, &c. ſo therein being as aforeſaid, with an intent to defraud ſaid ſociety or office): (Colloquium concerning plaintiff and the fire.) Words: "Unleſs we hinder him from getting his inſurance, we ſhall never be able to ſleep ſafe in our beds" (meaning and inſinuating as before): (Colloquium concerning plaintiff and the fire.) Words: "If we don't bring this man to juſtice, (thereby then and there meaning and inſinuating that ſaid plaintiff had and did feloniouſly, &c. ſet fire to, &c. and that that he ought to be puniſhed for ſo doing) we ſhall not ſleep ſafe in our beds:" (Like colloquium.) Words: "I believe that he ſet fire to his houſe" (meaning that plaintiff did feloniouſly, &c): (Colloquium, concerning plaintiff, fire, inſurance, and loſs.) Words: "He ſet it (meaning, &c.) on fire (meaning that ſaid plaintiff had and did feloniouſly, &c.) he has inſured for a large ſum, I believe he had little or no property in his houſe" (meaning

2d Count.

3d Count.

4th Count.

5th Count.

6th Count.

that ſaid plaintiff had inſured his ſtock in trade, &c. which had been ſo burnt and conſumed as aforeſaid, for a much greater and larger ſum of money than the ſame were worth, or *than* the juſt and true value thereof, and that plaintiff had feloniouſly, &c. with intent to cheat and defraud the ſaid ſociety): (Like colloquium.) Words: "If we allow ſuch a fellow as this to recover his inſurance, we ſhall never be able to ſleep ſafe in our beds" (meaning, &c. (Like colloquium.) Words: "We muſt hinder Routledge, of New Crane, from getting his inſurance, or we ſhall never be able to ſleep," &c. &c. &c. (Colloquium, concerning plaintiff and fire.) Words: "We muſt bring this man to juſtice: Let us proſecute him." (Like colloquium.) Words: "I am ſure he ſet fire to his houſe" (Colloquium concerning plaintiff, fire, inſurance, and loſs) Words: "Ten or fifteen pound's worth of ſailor's jackets made a great ſhew" (thereby then and there hinting, inſinuating, and intending to have it underſtood by the ſaid perſons in whoſe preſence and hearing he ſo as aforeſaid ſpoke and publiſhed the ſaid laſt-mentioned words, that ſaid plaintiff had inſured his ſtock, &c. &c. as before). (Like colloquium) Words: "I wonder his correſpondence has increaſed ſo much as to have ſuch a ſtock in ſo ſhort a time as three or four years" (meaning, &c. Add a ſimilar inuendo, as in the laſt Count) And afterwards, and before ſaid John made any application of or to the truſtees or acting members then being of and from the ſaid ſociety to receive and be paid the ſaid ſum of ſix hundred and fifty-one pounds ſix ſhillings and tenpence, being the juſt and true amount of the damage and loſs which he ſaid plaintiff had ſo as aforeſaid ſuffered by and on account of ſaid fire, and from and againſt which he was ſo as aforeſaid inſured by ſaid ſociety, and which the ſtock and fund of the ſaid ſociety was ſubject and liable to pay to ſaid plaintiff, and which he ſaid plaintiff was legally and juſtly entitled to receive of and from ſaid ſociety, to wit, on the day and year laſt aforeſaid, at, &c. aforeſaid, in a certain diſcourſe which he ſaid defendant then and there had with one John Maſon, he the ſaid J. M. then and there being one of the truſtees and an acting member of ſaid ſociety, and a good and worthy ſubject, &c. of and concerning ſaid plaintiff, and of and concerning ſaid fire that had ſo as aforeſaid accidentally happened in his ſaid meſſuage or, &c. and alſo of and concerning ſaid inſurance and loſs of ſaid plaintiff, he ſaid defendant then and there falſely, &c. ſaid, &c. of and concerning ſaid plaintiff, to and in the preſence, &c. ſaid J. M. ſo as aforeſaid being one of the truſtees and, &c. theſe falſe, &c. words, that is to ſay, "If you (then and there addreſſing himſelf to and meaning ſaid J. M. ſo as aforeſaid being one, &c.) pay his (meaning ſaid plaintiff's) inſurance (meaning ſaid damage or loſs which he ſaid plaintiff had ſo as aforeſaid ſuffered by and on account of ſaid fire, and from which he was ſo as aforeſaid inſured by ſaid ſociety) we ſhall never be able to ſleep ſafe in our beds (thereby then and there meaning and inſinuating that ſaid plaintiff had and did feloniouſly, &c. ſet fire to his ſaid, &c. and had feloniouſly,

Count.

Count.

Count.

Count.

Count.

Count.

Spoken oblique-

Count.

Count, inducement, words ſpoken to one of the members of ſociety for inſuring from

niously, &c. ſet fire to and burnt, &c. his ſaid ſtock in trade, &c. of him ſaid plaintiff ſo therein being and ſo inſured as aforeſaid, with intent to cheat, &c. ſaid ſociety); your ſurveyor (meaning the ſurveyor of, for, or to ſaid ſociety) can affect his (meaning ſaid plaintiff) life" (not only then and there meaning as before, that ſaid plaintiff had feloniouſly, &c. ſet fire to his ſaid houſe, but that the ſurveyor of, &c. ſaid ſociety well knew and could prove ſame againſt the ſaid plaintiff): Like inducement (ſaying of "ſaid fire"); colloquium. Words: "I believe that he had ſet fire to his houſe" (meaning that ſaid plaintiff did feloniouſly, &c.): Like inducement to a colloquium with one Edward Rowley, then and there being the ſurveyor of ſaid ſociety, of and concerning, &c. as in laſt Count. Words: "Had you (meaning ſaid ſurveyor) attended at Sherwood's (meaning the houſe or office of ſaid juſtice before-mentioned, and alluding to ſaid examination of ſaid plaintiff touching and concerning ſaid ſuppoſed crime ſo as aforeſaid falſely and maliciouſly laid to the charge of and alledged againſt plaintiff as aforeſaid) the day the parties were ſummoned (meaning ſaid twenty-ſixth of March before-mentioned) he (meaning ſaid plaintiff) would have been committed" (meaning that ſaid plaintiff had, and that ſaid E. Rowley of his own knowledge knew, and could teſtify that ſaid plaintiff had feloniouſly, &c. ſet fire to his ſaid meſſuage, &c.) Like inducement, and a ſimilar colloquium. Words: "Proſecute him (meaning plaintiff, thereby [illegible] that ſaid plaintiff had feloniouſly, &c. ſet fire to his ſaid meſſuage or, &c.) and your evidence (meaning the knowledge, teſtimony, and evidence of ſaid E. Rowley reſpecting ſaid fire) will affect his life" (meaning the life of ſaid plaintiff) by ſpecial reaſon and means, &c. which ſaid malicious proſecution of ſaid plaintiff by ſaid defendant in ſaid firſt Count mentioned, and the ſpeaking, &c. of which ſeveral falſe, &c. words hereinbefore mentioned by the ſaid defendant of and concerning ſaid plaintiff he ſaid plaintiff is not only greatly hurt and injured in his aforeſaid good name, fame, credit, and reputation, and brought into public ſcandal, infamy, and diſgrace with and amongſt all his neighbours and other good and worthy ſubjects of this realm, inſomuch that divers of thoſe neighbours and ſubjects to whom the innocence and integrity of ſaid plaintiff in the premiſes were unknown, have on occaſion of the ſaid premiſes ſuſpected, and ſtill do ſuſpect ſaid plaintiff to have been, and to be a perſon guilty of arſon, and that he feloniouſly ſet fire to his ſaid meſſuage or, &c. and have on that occaſion from thence hitherto wholly refuſed, and ſtill do daily more and more refuſe to have any commerce, acquaintance, or diſcourſe with him, or to have any thing to do with him as they were before uſed and accuſtomed to do, and would have done again had not ſaid plaintiff been ſo as aforeſaid proſecuted by ſaid defendant, and had not ſaid ſeveral words been ſo as aforeſaid ſpoken and publiſhed by ſaid defendant of and concerning him ſaid plaintiff, but alſo by reaſon and means, and on account of the premiſes hereinbefore mentioned, and for no other

15th Count.

16th Count.

17th Count.

Special

reaſon, by no other means, and on no other account whatſoever, the ſaid ſociety have hitherto refuſed, and ſtill do refuſe to pay to the ſaid plaintiff his ſaid inſurance, damage, or loſs of, &c. which he ſaid plaintiff had and has ſo as aforeſaid ſuſtained and ſuffered by the means and on account of ſaid fire, and againſt which he was ſo as aforeſaid inſured by ſaid ſociety, or any part thereof, and the ſame and every part thereof on occaſion and by means, and on account of the premiſes aforeſaid, remain due, owing, and unpaid to ſaid plaintiff; and the ſaid plaintiff, by and on account of ſaid premiſes, and on no other account whatſoever, has been hindered, prevented, and deprived, &c. from receiving the ſame, or any part thereof, and is in great danger of wholly loſing the ſame; and ſaid plaintiff, by means of the premiſes, was and hath been forced and obliged to ſuffer and undergo, and did ſuffer, &c. and hath ſuffered, &c. many great and arduous labours and troubles both of body and mind, and to lay out and expend, and hath neceſſarily laid out and expended a large ſum of money, to wit, the ſum of fifty pounds, and ſaid plaintiff is alſo, by means of the premiſes aforeſaid, otherwiſe greatly injured and damnified, very much impoveriſhed, and almoſt wholly ruined, to wit, at, &c. aforeſaid; wherefore, &c. Damages two thouſand pounds. Suit, &c. [Defendant pleaded the general iſſue.]

This Cauſe came on to be tried, but plaintiff could not prove the ſpecial damages; and as ſeveral very ſuſpicious circumſtances appeared againſt him, the chief juſtice recommended the withdrawing a juror.

Declaration at ſuit of *huſband and wife*, for *words of adultery* ſpoken of plaintiff's *wife*, and *ſlander*.

BEDFORDSHIRE, to wit. T. S. and S. his wife complain of L. W. and S. his wife being in the cuſtody, &c. of a plea of treſpaſs on the caſe; for that whereas ſaid S. S. now is a good, pious, chaſte, virtuous, and honeſt ſubject, and hath always for all her lifetime paſt hitherto behaved and governed herſelf, and until the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, and defamatory words hereafter ſpecified, and the reporting and publiſhing of the ſeveral ſlanders hereafter mentioned by ſaid Sarah W. of and concerning ſaid Sarah S. was always reputed, eſteemed, and accepted amongſt all her neighbours and divers other worthy ſubjects of this realm, to be a perſon of good name, fame, credit, and reputation, to wit, at B. in ſaid county of B. and that ſhe the ſaid S. S. hath not ever been guilty, or until the time of the ſpeaking and publiſhing, &c. been ſuſpected to have been guilty of any adultery, fornication, or whoredom, or of any other ſuch hurtful crime; by means of which ſaid premiſes the ſaid S. S. before the ſpeaking, &c. of the ſaid falſe, &c. words, &c. and of the reporting, &c. of the ſeveral ſlanders hereafter mentioned by ſaid S. W. of and concerning ſaid S. S. had deſervedly obtained and ſecured to herſelf the benevolence, good opinion, and credit of all her neighbours, and alſo of divers other good and worthy ſubjects of this kingdom to whom ſhe was known, to wit,

at

at Bedford aforeſaid; and the ſ and S. his wife, befo
the ſpeaking and publiſhing of, were
and quietly together, and to enjoy great happineſs in their married ſtate; yet ſaid S. W. well knowing all and ſingular the premiſes aforeſaid, but contriving, &c. to prejudice, degrade, and injure ſaid S. S. in her aforeſaid good name, &c. and to cauſe ſaid S. S. to be brought into public ſcandal and diſgrace, and to cauſe her to be eſteemed and ſuſpected to be a perſon guilty of adultery, and to diſturb the repoſe and quiet of ſaid S. S. in her family, and to render her ſuſpected to her huſband, and to make ſaid T. S. uneaſy with and jealous of ſaid S. S. on the day of A. D. at, &c. aforeſaid, in a certain diſcourſe which ſaid S. W. then and there had with divers good and worthy ſubjects, &c. of and concerning ſaid S. S. the the ſaid S. W. then and there falſely, &c. ſaid, &c. of and concerning ſaid S. S. in the preſence and hearing of thoſe ſubjects, theſe falſe, &c. words, to wit, "I (meaning herſelf ſaid S. W.) caught her (meaning ſaid S. S.) lying with Getup (meaning one, &c. and alſo meaning that ſaid S. S. was in the act of carnal copulation with ſaid, &c.) in the neceſſary houſe belonging to the houſe of ſaid T. S. in Bedford aforeſaid," &c. &c.: And afterwards, to wit, on ſame day and year afor ſaid, at, &c. aforeſaid, in a certain other diſcourſe which ſaid S. W. then and there had with divers other good and worthy ſubjects, &c. of and concerning ſaid S. S. the the ſaid S. W. of her further malice againſt the ſaid S. S contriving, &c. as aforeſaid, then and there falſely and maliciouſly publiſhed, reported, and declared of and concerning ſaid S. S. in the preſence and hearing of the ſaid laſt-mentioned ſubjects, the following falſe ſlander, that is to ſay, "That ſhe the ſaid S. W. had caught the ſaid S. S. lying (meaning in the act of carnal copulation) with one James Getup, in a neceſſary houſe in B. aforeſaid;" by reaſon and means of the ſpeaking and publiſhing of the ſeveral ſlanders aforeſaid by her the ſaid S. W. of and concerning ſaid S. S. ſhe the ſaid S. S. is greatly prejudiced degraded, and injured in her good name, &c. and is brought into public ſcandal and diſgrace amongſt all her neighbours, and divers other good and worthy ſubjects of this kingdom, and by means of the premiſes aforeſaid, divers good and worthy ſubjects of this kingdom to whom the innocence and integrity of ſaid S. S. in the premiſes were unknown, have, on occaſion of the ſpeaking, &c. of ſaid ſeveral words, and of the reporting of, &c. of ſaid ſeveral ſlanders from thence hitherto wholly refuſed, and ſtill do daily more and more refuſe to have any commerce, acquaintance, or diſcourſe with her, or to have any thing to do with her, as they were before accuſtomed to do, and would have done again had not thoſe words been ſpoken, or thoſe ſlanders publiſhed, and by means thereof divers uneaſineſſes have ariſen between the ſaid T. S. and S. his wife, and ſaid T. S. hath been jealous of her, and hath been very much diſpleaſed with her, and hath refuſed to let her aſſociate herſelf with him, or have any thing to do with him and her repoſe in her family

2d Count.

hath by means thereof been greatly disturbed, and the said S. S. hath been greatly injured and damnified in many other respects to said plaintiff their damages of one hundred pounds; and therefore they bring their suit, &c. Pledges, &c.

Action for words spoken of a surveyor, upbraiding him in his business.

LONDON, to wit. W. T. complains of R. W. being, &c.; for that whereas said plaintiff now is a good, true, honest, just, and faithful subject of this kingdom, and as such a good, true, &c. from the time of his nativity hitherto hath always behaved, &c. and has for all the time aforesaid until the time of the speaking, &c. of the several false, &c. words hereafter mentioned, been held, &c. amongst all his neighbours and other, &c. to be a man of good name, &c. and has never been guilty, nor until the time of the speaking, &c. hereafter mentioned, been suspected of having been guilty of any kind of felony, larceny, robbery, trickery, roguery, cheating, deceit, fraud, or falsehood, or any other such hurtful crime: And whereas said plaintiff, at the several times of the speaking, &c. was, and for divers years then last past had been, and ever since hath been, and still is a surveyor, and the art or business of a surveyor hath used, exercised, followed, and carried on, and still uses, &c. with great skill, knowledge, candour, and fidelity; by means of which said premises said plaintiff, before the speaking and publishing, &c. had deservedly obtained and acquired to himself the good opinion and credit of all his neighbours and other good, &c. subjects to whom he was known, and also daily acquired sundry great gains and profits in his aforesaid business, to the very comfortable support of himself and his family, and to the very great increase of his riches, to wit, at, &c. aforesaid; yet said defendant, well knowing all and singular the premises aforesaid, but contriving and maliciously intending wrongfully and unjustly to prejudice, degrade, and injure said plaintiff in his aforesaid good name, fame, &c. &c. and in his business aforesaid, and *to cause him to be esteemed and reputed a thief and a robber, and also* to cause him to be esteemed a person not understanding his said business of a surveyor, and to bring him into public scandal, ignominy, and disgrace among all his neighbours and other good, &c. subjects, to whom he was known, *and to subject him to the pains and penalties by the laws and statutes of this realm made and provided against those who commit any kind of theft, robbery, or fraud,* on day of , A.D. 1775, at L. &c. in a certain discourse which said defendant then and there had with said plaintiff, in the presence and hearing of divers good, &c. subjects of, &c. of and concerning said plaintiff in his aforesaid business, and otherwise, he said defendant then and there falsely and maliciously said, &c. these false, &c. words following, of and concerning said plaintiff in his business aforesaid, and otherwise and in the presence and hearing of those subjects, that is to say, "Damn you, (meaning said plaintiff) you (again meaning said plaintiff) are a rascal, you (again meaning said plaintiff) are no surveyor

meaning

(meaning that plaintiff did not underſtand his ſaid buſineſs of a ſurveyor), and you (again meaning ſaid plaintiff) are a villain; damn you, (again meaning ſaid plaintiff), you (again meaning ſaid plaintiff) have robbed me" (meaning himſelf ſaid defendant). Words: "Damn you, you are a raſcal, you are no ſurveyor." 2d Count. Words: "You are a raſcal, you are a villain; damn you, you are no ſurveyor:" 3d Count. by means of the ſpeaking, &c. of which ſaid ſeveral falſe, &c. words, ſaid plaintiff is very much injured, prejudiced, and damnified in his aforeſaid good name, &c. and in his buſineſs aforeſaid and otherwiſe, and is brought into public ſcandal, ignominy, and diſgrace amongſt all his neighbours and other good and worthy ſubjects of this realm, and is greatly hurt in his buſineſs of a ſurveyor, inſomuch that divers perſons who uſed to employ ſaid plaintiff in his ſaid buſineſs of a ſurveyor, have ever ſince, by reaſon of the ſaid ſpeaking, &c. of ſaid ſeveral falſe, &c. words, refuſed to employ him ſaid plaintiff in his aforeſaid buſineſs of a ſurveyor, as ſuppoſing him ſaid plaintiff not to underſtand ſaid buſineſs of a ſurveyor, *and very many of thoſe ſubjects* to whom the innocence and integrity of plaintiff in the premiſes were unknown, have always from the time of the ſpeaking, &c. ſaid words ſo vehemently ſuſpected ſaid plaintiff to have been and to be a thief, and a perſon guilty of robbery, that they have on that account always from thence hitherto wholly refuſed, and ſtill do daily more and more and more refuſe to have any commerce, acquaintance, or diſcourſe with him, or to have any thing to do with him as before they were accuſtomed to do, and would have done again had not theſe words been ſpoken, to wit, at L. aforeſaid. Damages five hundred pounds. Suit, &c. Pledges, &c.

THAT whereas ſaid Lawrence Snorum now is a good, true, honeſt, juſt, and faithful ſubject of this kingdom, and as ſuch a good, true, honeſt, juſt, and faithful ſubject from the time of his nativity, hitherto hath always behaved, had, and governed himſelf, and hath always hitherto been held, eſteemed, and reputed as ſuch amongſt all his neighbours and all other perſons to whom he was any ways known, and has never yet been guilty, nor until the ſpeaking, &c. of the ſeveral falſe, &c. words hereafter mentioned, been ſuſpected to have been guilty of any kind of perjury or ſubornation of perjury, knavery, trickery, cheating, deceit, or falſehood, or any other ſuch hurtful crime; by means of which ſaid premiſes ſaid plaintiff, before the ſpeaking, &c. of ſaid ſeveral falſe, &c. words hereinafter mentioned to have been ſpoken, &c. by ſaid Dorothy, the wife of ſaid John Dirty, to of and concerning ſaid plaintiff, had deſervedly obtained and got to himſelf the benevolence, good opinion, and credit of all his neighbours and other good and worthy ſubjects of this realm to whom he was known, to wit, at W. in ſaid county of Middleſex: And whereas the ſaid plaintiff, at the time of the ſpeaking, &c. of the ſeveral falſe, &c. words hereafter mentioned, was, and long before had been, Declaration for words ſpoken of an *attorney*, i. e. *perjury* on the taxation of coſts and diſhoneſty in his profeſſion.

been, and from thence hitherto hath been: ſtill of the tornies of the court of our lord the now king, before the king himſelf, *of the bench here, to wit, at Weſtminſter, in ſaid county of Middleſex*, and in the office, practice, and buſineſs of an attorney at law, has been during all that time retained and employed by divers good and worthy ſubjects of this realm to proſecute and defend for them, and as their attorney, agent and ſolicitor, divers ſuits and buſineſſes in this court here, and other his majeſty's courts of record at Weſtminſter and elſewhere, to do and negociate divers other affairs and buſineſſes for them reſpectively, and the ſaid plaintiff hath, during all that time, tranſacted and carried on all ſuch cauſes, ſuits, and buſineſſes as have ever been committed to his care, and hath always behaved himſelf in the profeſſion of an attorney with judgment, integrity, care, and reputation, without committing, or until the ſpeaking and publiſhing the ſeveral falſe, &c. words hereinafter mentioned, ſuſpected of having committed any kind of trickery, knavery, roguery, diſhoneſty, or perjury, or any other ſuch hurtful crime, to wit, at W. aforeſaid, and by means of ſaid laſt-mentioned premiſes ſaid plaintiff hath, during all that time got and acquired to himſelf deſervedly large ſums of money in his aforeſaid buſineſs, to the comfortable ſupport of himſelf and his family, and to the great increaſe of his riches, to wit, at W. aforeſaid: And whereas ſaid plaintiff, before the ſpeaking, &c. of the ſeveral falſe, &c. words hereinafter mentioned, had been and was in his ſaid buſineſs employed by one Anne Lead to commence and proſecute a certain ſuit or action at law in a plea of breach of covenant in this court here, wherein ſaid Ann Lead, as adminiſtratrix of all and ſingular the goods, chattels, and credits which were of Richard Lead, deceaſed, who died inteſtate, was plaintiff, and the ſaid J. D. was defendant, and ſaid plaintiff, in the proſecuting, carrying on, and conducting the ſaid cauſe or ſuit, behaved himſelf with great integrity and honeſty, to wit, at, &c. aforeſaid: And whereas ſaid plaintiff, before the ſpeaking and publiſhing of the ſaid ſeveral falſe, &c. words hereafter mentioned, to wit, on the third of February 17[illegible]6, went before one Anthony Dickens, eſquire, then and ſtill being one of the prothonotaries of this court here, in order to tax the coſts in the aforeſaid cauſe or ſuit, and did then and there tax the coſts in the aforeſaid cauſe or ſuit, and ſaid plaintiff, on the ſaid taxation, then and there behaved himſelf with great truth, integrity, and honeſty, and without committing of perjury, to wit, at W. aforeſaid: And whereas the ſaid coſts were taxed at a certain ſum of money, to wit, the ſum of ſix pounds ten ſhillings, and were afterwards, and before the ſpeaking, &c. of the falſe, &c. words hereafter mentioned, to wit, on ſaid third of February 1776, paid by ſaid J. D. to ſaid plaintiff, to wit, at W. aforeſaid; yet the ſaid Dorothy, the wife of ſaid J. D. well knowing all and ſingular the premiſes aforeſaid, but greatly envying the happy ſtate and condition of the ſaid plaintiff, and contriving and maliciouſly intending to hurt, injure, and prejudice the ſaid plaintiff in his

aforeſaid

aforeſaid good name, and in his buſineſs aforeſaid, and to cauſe him to be eſteemed and reputed a diſhoneſt man, and to have been guilty of perjury, and endeavouring as much as in her lay, to ruin him ſaid plaintiff in his credit and reputation therein, and to bring him into public hatred, ſcandal, ignominy, and diſgrace, and to ſubject him to the pains and penalties by the laws and ſtatutes of this realm made and provided againſt thoſe who are guilty of cheating, or who commit perjury, on the fourteenth of February A. D. 1776, to wit, at W. aforeſaid, in a certain diſcourſe which ſaid Dorothy, the wife of ſaid J D. then and there had with divers good and worthy ſubjects of this realm of and concerning ſaid plaintiff in his aforeſaid buſineſs, of and concerning the aforeſaid coſts, the ſaid Dorothy then and there, in the preſence and hearing of thoſe ſubjects, falſely, &c. ſaid, &c. of and concerning ſaid plaintiff, to wit, in his buſineſs aforeſaid, theſe falſe, &c. words following, that is to ſay, "It was nothing more than a trick upon us (meaning ſaid J D. her huſband, and herſelf ſaid D. and meaning ſaid plaintiff had tricked ſaid J. D. out of the ſaid coſts), for Snorum (meaning ſaid plaintiff) forſwore himſelf" (meaning ſaid plaintiff had committed wilful and corrupt perjury); and the ſaid plaintiff, who was then and there preſent, then and there expoſtulated with the ſaid defendants on the charge aforeſaid ſo by her made, the the ſaid defendants then and there falſely, &c. ſaid in anſwer to ſuch expoſtulation, and loudly publiſhed the falſe, &c. words following, of and concerning ſaid plaintiff, in the preſence and hearing of thoſe ſubjects, that is to ſay, "It is nothing but the truth what I have before ſaid" (meaning thereby that ſaid plaintiff had actually committed perjury before the prothonotary): And afterwards, &c. [as before, as the nature of the caſe may require]; by means of the ſpeaking, &c. of the ſeveral falſe, &c. words, he ſaid plaintiff is very much hurt, injured, and damnified in his aforeſaid good name, fame, &c. and in his buſineſs aforeſaid, and is brought into public ſcandal, ignominy, and diſgrace amongſt his neighbours and other good and worthy ſubjects of this realm, inſomuch that thoſe neighbours and ſubjects, divers of whom were uſed and accuſtomed to retain and employ him ſaid plaintiff in his buſineſs, and to whom the innocence and integrity of ſaid plaintiff in the premiſes were unknown, have always from the time of the ſpeaking, &c. of ſaid ſeveral falſe, &c. words, hitherto ſo vehemently ſuſpected plaintiff to have been and to be a perſon guilty of trickery, cheating, diſhoneſty, and of perjury in his buſineſs aforeſaid, that they have on that account wholly deſiſted from employing him ſaid plaintiff in his buſineſs aforeſaid, to have any commerce, acquaintance, or diſcourſe with him, or to have any thing to do with him as before they were uſed and accuſtomed to do and would have done again had not thoſe words been ſpoken, to wit, at W. aforeſaid; wherefore ſaid plaintiff ſaith that he is injured, and hath ſuſtained damage to

the value of five hundred pounds, and therefore he brings his ſuit, &c. Pledges, &c.

The plaintiff in the above cauſe obtained a verdict and forty pounds damages.

Eaſter Term, 17. Geo. III.

Declaration for words of perjury on an affidavit made by plaintiff relative to defendant, who had given notice of his becoming bail for a woman who ſtood indicted for a felony.

LONDON, to wit. Thomas Bandy complains of John Whipup the elder, being, &c. of a plea of treſpaſs on the caſe; for that whereas ſaid plaintiff now is a good, true, honeſt, juſt, and faithful ſubject of this kingdom, and as ſuch a good, &c. from the time of his nativity hath always hitherto behaved, had, and governed himſelf, and hath always until the ſpeaking, &c. of the falſe, &c. words hereafter mentioned, been ſaid, held, and eſteemed as ſuch amongſt all his neighbours and all other perſons to whom he was in any wiſe known, and has never yet been guilty, nor until the time of the ſpeaking, &c. of the ſeveral falſe, &c. words hereafter mentioned to have been ſpoken and publiſhed by ſaid defendant of and concerning ſaid plaintiff, been ſuſpected to have been guilty of perjury, ſubornation of perjury, or of any other ſuch hurtful crime, by reaſon of which ſaid premiſes he ſaid plaintiff, before the ſpeaking, &c. of the ſeveral falſe, &c. words hereafter mentioned, had deſervedly obtained and procured to himſelf the benevolence, good opinion, and credit of all perſons to whom he was known, to wit, at London aforeſaid: And whereas one E. N. before and at the time of the ſpeaking, &c. of the ſaid falſe, &c. words hereafter mentioned, ſtood indicted for a certain offence or miſdemeanor, to wit, for obtaining from E. C. certain goods and chattels under falſe pretences, contrary to the form of the ſtatute in ſuch caſe made and provided, and the ſaid E. N. was then in cuſtody for ſuch offence or miſdemeanor, but was endeavouring to procure her releaſe and diſcharge from her impriſonment, by giving bail to appear at the then next ſeſſion of the peace to be holden in and for the city and liberty of Weſtminſter, in the county of Middleſex, that is to ſay, for the purpoſe of trying her traverſe to the ſaid indictment, ſhe having before then pleaded thereto not guilty, and for that purpoſe had, before the ſpeaking, &c. of the words hereafter mentioned, given notice of bail to the ſolicitor for the proſecution of the ſaid indictment for ſuch her appearance, and had in ſuch notice named the ſaid J. W. and certain others as perſons that would attend before the right honourable William, lord Mansfield (then and ſtill chief juſtice of our lord the king aſſigned to hold pleas in the court of our lord the king, before the king himſelf, and then having power, if he thought proper, to admit the ſaid Eleanor to bail) at Guildhall, in the city of London, on the twentieth day of February A. D. 1777: And whereas ſaid plaintiff had, before the ſpeaking, &c. of the words hereafter mentioned, made enquiries into the character of ſaid defendant, and the other perſons named in ſuch notice of bail, and had, on the twenty-fourth of February 1777, made

made an affidavit before ſir Richard Aſton, knight, one of the juſtices of our lord the king aſſigned to hold pleas in the ſaid pleas of our lord the king, before the king himſelf, he the ſaid ſir R. Aſton having a ſufficient authority to adminiſter an oath to ſaid plaintiff in that behalf, as to and concerning the reſult of ſuch enquiries relative to the ſufficiency of the ſaid defendant and the ſaid other perſons to become bail on the occaſion aforeſaid, and in ſuch affidavit had depoſed to the truth and nothing but the truth, to wit, at L. &c. aforeſaid; yet ſaid defendant, well knowing the premiſes, but greatly envying the happy ſtate and condition of ſaid plaintiff, and contriving, &c. wrongfully and unjuſtly to hurt, prejudice, and injure the ſaid plaintiff in his aforeſaid good name, &c. and to bring him into public ſcandal, ignominy, and diſgrace, and to cauſe him to be eſteemed and reputed amongſt his neighbours and other worthy ſubjects of this realm to be a man guilty of perjury, and to cauſe him to undergo and ſuffer the pains and penalties by the laws and ſtatutes of this realm made and provided againſt perſons guilty of perjury after the making of ſuch affidavit, to wit, on ſaid firſt day of March in A. D. 1777, at London, &c. aforeſaid, in a certain diſcourſe which he ſaid defendant then and there had with ſaid plaintiff of and concerning him ſaid plaintiff, in the preſence and hearing of divers good and worthy ſubjects of this realm, and of and concerning the aforeſaid affidavit, he ſaid defendant then and there falſely, &c. ſaid, &c. theſe falſe, &c. words following to, of, and concerning ſaid plaintiff, in the preſence and hearing of thoſe ſubjects, that is to ſay: "You (meaning ſaid plaintiff) are perjured, (meaning that plaintiff had been guilty of wilful and corrupt perjury in his aforeſaid affidavit) and I'll (meaning that he ſaid defendant would) prove you (meaning ſaid plaintiff) perjured, and you (again meaning ſaid plaintiff) are a perjured villain" (meaning that ſaid plaintiff had been guilty of perjury in his affidavit aforeſaid). [There were a variety of other Counts on ſimilar words]; by means of the ſpeaking, &c. of which ſaid ſeveral falſe, &c. words aforeſaid, he ſaid plaintiff is greatly hurt, prejudiced, and damnified in his aforeſaid good name, &c. and is brought into public ſcandal, ignominy, and diſgrace amongſt all his neighbours, friends, and acquaintance, inſomuch that divers of thoſe neighbours, friends, and acquaintance to whom the innocence and integrity of ſaid plaintiff in the premiſes were unknown, have, from the time of the ſpeaking of thoſe words, hitherto ſo vehemently ſuſpected the ſaid plaintiff to have been guilty of perjury, that they have on that account wholly refuſed, and ſtill do daily more and more refuſe to have any commerce, acquaintance, or diſcourſe with him, as they otherwiſe would have done had not thoſe words been ſpoken and publiſhed, and ſaid plaintiff is, on occaſion of the premiſes, otherwiſe greatly injured, to wit, at L. &c. aforeſaid, to the damage of the ſaid plaintiff of one hundred pounds, for which he brings ſuit, &c. Pledges, &c.

J. MORGAN.

LONDON,

Mich. Term, 17. Geo. III.

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AND the ſaid Thomas, in his own proper perſon, comes and defends the wrong and injury, when, &c. and ſays, that he is not guilty of the premiſes aforeſaid in manner and form as the ſaid William and James have above thereof complained againſt him; and of this he puts himſelf upon the country, &c.: And for further plea as to the printing and publiſhing, and cauſing to be printed and publiſhed in the ſaid newſpaper in the firſt count of the ſaid declaration mentioned the advertiſement in that count mentioned above ſuppoſed to have been done by the ſaid defendant, he the ſaid defendant, by leave of the court, &c. according to the form of the ſtatute, &c. ſays that the ſaid plaintiffs ought not to have or maintain their aforeſaid action thereof againſt him, becauſe he ſays that before the printing and publiſhing the ſaid advertiſement by him the ſaid defendant, the ſaid manor, farm, and premiſes in the ſaid advertiſement in the ſaid firſt count of the ſaid declaration mentioned were ſettled upon Mrs. W. widow of R. W. W. eſquire, deceaſed, as her jointure, to wit, by virtue of certain indentures of leaſe and releaſe, made and bearing date, to wit, the ſaid indenture of leaſe the twenty-ſixth day of July 1769, and the ſaid releaſe the twenty-ſeventh day of July 1769, between the ſaid R. W. W. of the one part, and P. N. F. and P. F. of the other part, which ſaid ind leaſe id releaſe he the ſaid defendant now brings into court here reſpectively ſealed with the ſeal of the ſaid R. W. W.: And the ſaid defendant further ſaith, that the ſaid R. W. W. being ſeiſed thereof in fee, afterwards and before the printing and publiſhing the ſaid advertiſement, to wit, on the third day of November, A. D. 1773, at, &c. aforeſaid, by his laſt will and teſtament by him duly executed, and which he the ſaid defendant now brings into court here, demiſed the ſame to the ſaid Mrs. W. and to her heirs for ever: And afterwards, to wit, on the day of 177 , to wit, at L. aforeſaid, died without revoking or altering his ſaid will with reſpect to the ſaid deviſe, as by the ſaid will reference being thereunto had will appear, to wit, at L. aforeſaid: And the ſaid defendant further ſaith, that before and at the time of the printing and publiſhing of the ſaid advertiſement, a bill was depending in his majeſty's high court of chancery againſt the heirs at law of the ſaid R. W. W. in order to eſtabliſh the ſaid will, to wit, at L. &c. aforeſaid, for which reaſon he the ſaid defendant did print and publiſh, and cauſe to be printed and publiſhed the ſaid advertiſement, as it was lawful for him to do for the cauſe aforeſaid; and this the ſaid defendant is ready to verify; wherefore he prays judgment if the ſaid plaintiffs ought to have or maintain their aforeſaid action againſt him, &c: And for further plea as to the printing and publiſhing, and cauſing to be printed and publiſhed the advertiſement in the ſaid newſpaper in the ſaid laſt count of the ſaid declaration mentioned, &c. [A like plea to this count as to the firſt.]

J. MORGAN.

WILLIAM

LEICESTER, to wit. F. T. W. the ſaid plaintiff, now is a good, true, honeſt, and faithful ſubject of this realm, and as ſuch from his nativity hitherto hath always behaved and governed himſelf, and hath always, until the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, malicious, and defamatory words hereafter mentioned to have been ſpoken and publiſhed by the ſaid defendant to, of, or concerning the ſaid plaintiff, been eſteemed and reported to be a perſon of good name, fame, credit, and reputation, and hath never been guilty, nor until the ſpeaking and publiſhing of the ſeveral falſe, feigned, ſcandalous, opprobrious, and malicious words hereafter mentioned been ſuſpected to have been guilty of forgery, or of any ſuch crime or offence; yet the ſaid defendant, well knowing the premiſes, but contriving and maliciouſly intending not only to hurt, injure, and prejudice the ſaid plaintiff in his aforeſaid good name, fame, credit, and reputation, and to bring him into public hatred, ſcandal, and diſgrace, but to ſubject him alſo to the pains and penalties by the laws and ſtatutes of this realm made and provided againſt thoſe who commit forgery, heretofore, to wit, on, &c. at, &c. in a certain diſcourſe which he the ſaid defendant then and there had with the ſaid plaintiff, in the preſence and hearing of divers good and worthy ſubjects of this realm, of and concerning the ſaid plaintiff, he the ſaid defendant then and there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed theſe falſe, feigned, ſcandalous, opprobrious, and malicious Engliſh words following to and of him the ſaid plaintiff, in the preſence and hearing of thoſe ſubjects, that is to ſay, "You (meaning him the ſaid plaintiff) have been guilty of forgery, and your aunt Mary Pad paid either one hundred pounds or two hundred pounds to make it up" (thereby meaning and inſinuating that the ſaid plaintiff had been guilty of the indictable offence of forgery, and that money had been given to prevent his being proſecuted for ſuch offence). 2d Count. Colloquium as follows. "You William Sulky (meaning him the ſaid plaintiff) have been guilty of forgery, and your aunt Mary Pad paid either one hundred pounds or two hundred pounds to make it up." 3d Count. Colloquium as follows. "You (meaning, &c.) have been guilty of forgery; you (meaning &c.) forged a bill, and it coſt your aunt either one hundred pounds or two hundred pounds to ſave you (meaning, &c.) from the gallows" (thereby meaning and inſinuating that the ſaid plaintiff had before then committed and been guilty of a forgery, for which he was liable to be indicted capitally, and that money had been given to prevent his being ſo proſecuted). 4th Count. Colloquium as follows. "You (meaning, &c.) have been guilty of forgery, and had it not been for your aunt you (meaning, &c.) would have been hanged for it" (meaning for the ſaid forgery ſo inſinuated to have been committed by the ſaid plaintiff as laſt aforeſaid). 5th Count. Colloquium as follows. "You (meaning, &c.) have been guilty of forgery." 6th Count. Colloquium as follows. "He (meaning

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(meaning the ſaid plaintiff) has been guilty of forgery." The concluſion then follows. By means of the ſpeaking and publiſhing of which ſaid ſeveral falſe, feigned, ſcandalous, opprobrious, and malicious words the ſaid plaintiff was and is greatly hurt, prejudiced, and injured in his aforeſaid good name, fame, credit, and reputation, and is fallen into great hatred, ſcandal, ignominy, and diſgrace amongſt his neighbours and other good and worthy ſubjects of this realm, inſomuch that divers of thoſe neighbours and ſubjects, to whom the innocence of the ſaid plaintiff in the premiſes was unknown, have always, from the time of the ſpeaking and publiſhing of the ſaid ſeveral words hitherto ſo vehemently ſuſpected the ſaid plaintiff to have been and to be guilty of forgery, that they on that account have always ſince refuſed, and ſtill do refuſe to have any intercourſe or dealings with him as before they were uſed and accuſtomed, and would have done again had not thoſe words been ſpoken; to the damage of the ſaid plaintiff of one thouſand pounds. V. LAWES.

Declaration for ſaying a report that the plaintiff had murdered the defendant's child.

FOR that whereas the ſaid plaintiff now is a good, pious, tender, humane, and honeſt ſubject of this kingdom, and as ſuch hath always hitherto behaved and governed himſelf, and until the ſpeaking and publiſhing of the ſeveral falſe, feigned, ſcandalous, and malicious words hereinafter mentioned to have been ſpoken and publiſhed by the ſaid defendant of and concerning the ſaid plaintiff was always eſteemed and reputed to be a perſon of good name, fame, credit, and reputation, and hath never been guilty, nor until the ſpeaking and publiſhing of the ſeveral falſe and ſcandalous words hereafter mentioned been ſuſpected to have been guilty of the horrid crime of murder, or of any other ſuch crime: And whereas before the ſpeaking and publiſhing of the ſeveral falſe, &c. words hereafter mentioned a certain infant child of the ſaid defendant died by the viſitation of Providence, and through diſeaſe and ſickneſs, and not by any aſſault or violence by the ſaid plaintiff, to wit, at, &c; yet the ſaid defendant, well knowing the premiſes, but contriving and maliciouſly intending to defame and injure the ſaid plaintiff, and to cauſe her to be brought into public ſcandal and diſgrace, and to cauſe him to be eſteemed and ſuſpected to be a perſon guilty of the horrid crime of murder, heretofore, to wit, on, &c. in a certain diſcourſe which the ſaid defendant then and there had with divers good and worthy ſubjects of this realm of and concerning the ſaid plaintiff, and of and concerning the ſaid infant child of him the ſaid defendant and the cauſe of its death, he the ſaid defendant then and there, in the preſence and hearing of thoſe ſubjects, falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed theſe falſe, feigned, ſcandalous, malicious, and opprobrious words following of and concerning the ſaid plaintiff, and the death and the cauſe of the death of the aforeſaid child of the aforeſaid defendant, that is to ſay, "She (meaning the ſaid plaintiff) murdered my child".

(meaning

(meaning the ſaid infant child of the ſaid defendant which had ſo died as aforeſaid, and alſo meaning that the ſaid plaintiff had murdered the ſaid child:) And alſo afterwards, &c. &c. &c.: By means of the ſpeaking and publiſhing of which ſaid ſeveral falſe, &c. words of and concerning the ſaid plaintiff, ſhe the ſaid plaintiff is greatly injured and hurt in her aforeſaid good name, &c. and is brought into public ſcandal and diſgrace amongſt all her neighbours and divers other worthy ſubjects of this kingdom; and ſhe hath alſo been ſuſpected of having been guilty of the horrid crime of murder, and divers good and worthy ſubjects of this kingdom, to whom the innocence of the ſaid plaintiff in the premiſes was unknown, have on occaſion of the ſpeaking and publiſhing of the ſaid ſeveral words from thence hitherto wholly refuſed, and ſtill do daily more and more refuſe to have any more commerce, acquaintance, or diſcourſe with her, or to have any thing to do with her as they were before accuſtomed to do and would have done again had not thoſe words been ſpoken; to the damage of the ſaid plaintiff of two thouſand pounds; and therefore ſhe brings her ſuit, &c. &c. &c.

V. LAWES.

FOR that whereas the ſaid plaintiff now is a good, true, honeſt, and faithful ſubject of this kingdom, and as ſuch good, &c. from the time of her nativity hitherto, hath always behaved, had, and governed herſelf, and hath always been eſteemed and reputed amongſt all her neighbours and other good and worthy ſubjects of this realm to whom ſhe was known to be a woman of good name, fame, credit, and reputation, and hath always hitherto lived free, untouched, unſpotted, and wholly unſuſpected of and from all and all manner of perjury, knavery, trickery, deceit, or falſehood, or any other ſuch hurtful crime; by means whereof the ſaid plaintiff, before the ſpeaking and publiſhing of the ſeveral falſe, feigned, ſcandalous, opprobrious, and malicious Engliſh words hereafter mentioned, had deſervedly obtained and acquired to herſelf the benevolence, good opinion, and credit of all perſons any ways acquainted with her, and of divers other good and worthy ſubjects of this realm; yet the ſaid defendant, well knowing the premiſes, but contriving and maliciouſly, &c. the ſaid plaintiff in her aforeſaid good name, &c. and wholly to deſtroy the ſame, and to bring her into public hatred, ſcandal, ignominy, and diſgrace, and to ſubject her to the pains and penalties by the laws and ſtatutes of this realm made and provided againſt thoſe who commit perjury, on, &c. at, &c. in a certain diſcourſe which the ſaid defendant then and there had with divers good and worthy ſubjects of this realm of and concerning the ſaid plaintiff, he the ſaid defendant then and there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed theſe falſe, &c. words following of the ſaid plaintiff in the preſence and hearing of thoſe ſubjects, that is to ſay, "She (meaning the ſaid plaintiff) is perjured, and hath forſworn herſelf; and I (meaning himſelf the ſaid defendant) will

Accuſing plaintiff of perjury.

have her head (meaning the head of the plaintiff) in the pillory: And afterwards, to wit, on, &c. at, &c. in a certain other diſcourſe which the ſaid defendant then and there had with divers other good and worthy ſubjects of this realm of and concerning the ſaid plaintiff, he the ſaid defendant then and there falſely, &c. &c. &c. theſe other falſe, &c. &c. following of the ſaid plaintiff, in the preſence and hearing of thoſe laſt-mentioned ſubjects; that is to ſay, "She (meaning the ſaid plaintiff) is perjured, and hath forſworn herſelf:" And afterwards, &c. 3d Count, theſe words, "She is perjured." 4th Count, theſe words; "God damn her (meaning, &c.) for a bitch, I (meaning, &c) will have her head (meaning, &c.) in the pillory, (meaning a certain pillory, &c.) for ſhe (meaning, &c.) is a perjured bitch, and I (meaning, &c.) will try her (meaning, &c.) at the aſſizes for perjury;" by means of the ſpeaking and publiſhing of which ſaid ſeveral falſe, &c. words the ſaid plaintiff is greatly hurt, prejudiced, and injured in her aforeſaid good name, &c. and is fallen into great hatred, &c. amongſt her aforeſaid neighbours and other good and worthy ſubjects of this realm, inſomuch that divers of thoſe ſubjects, to whom the innocence and integrity of the ſaid plaintiff in the premiſes were unknown, have always, from the time of the ſpeaking and publiſhing of the ſaid ſeveral, &c. words, hitherto vehemently ſuſpected the ſaid plaintiff to be guilty of perjury, that they on that occaſion hath always ſince hitherto refuſed, and ſtill do refuſe more and more to have any converſation with her, or to have any thing to do with her, as before they were uſed and accuſtomed, and would have done again had not theſe words been ſpoken; to, &c.; damages, &c. *Drawn by* MR. WARREN.

Hilary Term, 26 Geo. III.

Declaration in C. R. againſt defendant for ſpeaking plaintiff of arſon, and alſo ſaying that he kept a *lady*, whereby plaintiff, who was going to be married, loſt his marriage.

MIDDLESEX, to wit. John Pounce complains of Thomas Saucy being, &c.; for that whereas the ſaid John now is a good, true, honeſt, juſt, and faithful ſubject of this realm, and as ſuch hath always behaved and governed himſelf, and until the ſpeaking and publiſhing of the ſeveral falſe, ſcandalous, malicious, and defamatory words hereafter mentioned to have been ſpoken and publiſhed by the ſaid Thomas of and concerning the ſaid John was always reputed, eſteemed, and accepted amongſt all his neighbours and other good and worthy ſubjects of this realm to be a perſon of good name, fame, and credit, and hath never been guilty, nor until the ſpeaking and publiſhing of the ſaid ſeveral falſe, ſcandalous, malicious, and defamatory words hereinafter mentioned been ſuſpected to have been guilty of arſon, ſetting fire to, or burning of any dwelling or other houſe, or outhouſe, or of any ſuch crime or offence: And whereas the ſaid John, before the ſpeaking and publiſhing of the ſaid ſeveral falſe, &c. hereafter mentioned, had dwelt and reſided in a certain meſſuage or dwelling-houſe ſituate at, &c. in, &c. which ſaid meſſuage or dwelling-houſe, together with certain *houſehold goods and other property* of the ſaid John therein being, had been, and was,

before the ſpeaking and publiſhing of the ſaid ſeveral falſe, &c. hereafter mentioned, burnt and conſumed by fire, but ſuch fire did not happen by deſign or purpoſely, nor did he the ſaid John in any manner cauſe the ſame, but the ſame was merely accidental and by misfortune, to wit, at, &c.: And whereas the ſaid John, before and at the time of the ſpeaking and publiſhing of the ſaid ſeveral falſe, &c. hereinafter mentioned, had paid, and was paying his addreſſes to one E. S. a perſon of conſiderable property and fortune, in the way of courtſhip, and with a view to contract matrimony with her, and no objection or prejudice had been excited or taken againſt him, either in reſpect of character, connections, diſpoſition, or behaviour, but on the contrary his ſaid addreſſes had been received, and a marriage was near being, and likely to have been concluded between him the ſaid John and and the ſaid E. S. whereby the ſaid John would have been preferred to a much more wealthy, happy, and agreeable ſtate and condition of life, to wit, at, &c.: Nevertheleſs the ſaid Thomas well knowing all and ſingular the premiſes aforeſaid, but contriving and maliciouſly intending to hurt, prejudice, and degrade him the ſaid John in his aforeſaid good name, fame, credit, and reputation, and to excite unfavourable prejudices in the mind of the ſaid E. S. againſt the ſaid John, and to hinder and prevent the ſaid intended marriage between them from taking effect, heretofore, to wit, on, &c. at, &c. in a certain diſcourſe which the ſaid Thomas then and there had with the ſaid E. S. of and concerning the ſaid John and the aforeſaid fire, and his connections, he the ſaid Thomas then and there falſely and maliciouſly ſaid, rehearſed, ſpoke, and publiſhed to the ſaid E. S. theſe falſe, &c. words following of and concerning the ſaid John and the aforeſaid fire, and his connections in life, that is to ſay, "I (meaning himſelf the ſaid Thomas) have been told that he (meaning the ſaid John) ſet his houſe on fire (thereby alluding to the fire heretofore mentioned, and alſo meaning and inſinuating that the ſaid John had occaſioned ſuch fire, and been guilty of arſon in ſetting fire to his ſaid houſe); that he (meaning again the ſaid John) has a baſtard child, the expences of which he (meaning again the ſaid John) could not pay till he (meaning again the ſaid John) got the money from the inſurance office (thereby meaning and inſinuating that he the ſaid John had been inſured againſt ſuch damage as aforeſaid by the aforeſaid fire, and that ſuch damages had been reimburſed and made good to him under ſuch inſurance); and that he (meaning again the ſaid John) keeps a lady" (thereby meaning and inſinuating that the ſaid John lived and cohabited with a kept miſtreſs, and that his manner of living and his connections in life were of a looſe, immodeſt, and improper nature, and that he was himſelf a diſſipated character, and an unfit and improper perſon for the ſaid E. S. to marry or take to huſband): Whereas in truth and in fact the ſaid Thomas, at the time of his ſpeaking and publiſhing the ſaid words ſo by him ſpoken as aforeſaid, had not been told or informed of the ſaid ſeveral circumſtances ſo by him aſ-

ſerted of and concerning the ſaid John as aforeſaid, or of any or either of them: And afterwards, to wit, on, &c. at, &c. in a certain other diſcourſe which the ſaid Thomas then and there had with the ſaid E. S. of and concerning the ſaid John and the aforeſaid fire, he the ſaid Thomas then and there falſely, &c. ſaid, &c. theſe other falſe, &c. words following of and concerning the ſaid John and the aforeſaid fire, that is to ſay, "I, &c. &c. &c." [as before in 1ſt Count, only leaving out what relates to having a child., and his keeping a lady]: Whereas in truth and in fact the ſaid Thomas, at the time of his ſo ſpeaking and publiſhing the ſaid words ſo by him ſpoken as laſt aforeſaid, had not been told that the ſaid John ſet his houſe on fire: And afterwards, to wit, on, &c. at, &c. in a certain other diſcourſe which the ſaid Thomas then and there had with the ſaid E. S. of and concerning the ſaid John and his connections, character, and circumſtances, he the ſaid Thomas then and there falſely, &c. &c. [as the 2d Count, only inſtead of mentioning his ſetting his houſe on fire inſert in lieu thereof that he had a baſtard child, and kept a lady, &c.]: Whereas in truth and in fact the ſaid Thomas, at the time of his ſo ſpeaking and publiſhing the ſaid words ſo by him ſpoken as laſt aforeſaid had not been told that the ſaid John had a baſtard child, nor were his fortune and circumſtances incumbered in the way inſinuated by the ſaid Thomas: And afterwards, to wit, on, &c. &c. [this Count like the 3d Count, only mention his keeping a lady, taking no notice of the child]: And afterwards, to wit, on, &c. at, &c. in a certain other diſcourſe, &c. of and concerning the ſaid John and his circumſtances, he the ſaid Thomas then and there falſely, &c. theſe other falſe, &c. that is to ſay, "He (meaning the ſaid John) has a baſtard child" (thereby meaning and inſinuating that the ſaid John, and that the circumſtances and fortune of the ſaid John were incumbered by his having a baſtard or illegitimate child to maintain and provide for): And afterwards, to wit, on, &c. in a certain other, &c. theſe other falſe, &c. "He (meaning, &c.) keeps a lady" (thereby meaning and inſinuating the ſaid John was a looſe and diſſipated character, and that his connections in life were of a diſſipated, looſe, immodeſt, and improper nature): And afterwards, to wit, on, &c. in a certain other diſcourſe which the ſaid Thomas then and there had with divers other good and worthy ſubjects of this realm of and concerning the ſaid John and the aforeſaid fire, he the ſaid Thomas, in the preſence and hearing of thoſe ſubjects, falſely, &c. ſaid, &c. theſe other falſe, &c. that is to ſay, "I (meaning, &c.) have been told that he (meaning, &c.) ſet his houſe on fire" (thereby alluding to the ſaid fire hereinbefore mentioned, and alſo meaning and inſinuating that the ſame was occaſioned by the ſaid John, and that he had been guilty of arſon in ſo ſetting fire to and burning his ſaid houſe): Whereas in truth, &c.: And afterwards, to wit, on, &c. [ſimilar to the 7th Count, only inſtead of ſaying he ſet his houſe on fire ſay that he kept a lady, and had a child]: And afterwards, to wit, on, &c. [like the 7th, only

1st Count.

2d Count.

3d Count.

4th Count.

5th Count.

6th Count.

7th Count.

8th Count.

9th Count.

only ſaying that he (meaning, &c.) ſet his houſe on fire (thereby again meaning and inſinuating that the ſaid John had been and was guilty of arſon]: By means of the ſpeaking of which ſaid ſeveral falſe, &c. words of and concerning the ſaid John, he the ſaid John was not only greatly hurt, injured, and damnified in his aforeſaid good name, fame, credit, and reputation, but was taken to have committed and to have been guilty of arſon, and of ſetting fire to his aforeſaid houſe: And the ſaid E. S. to whom he ſo paid his addreſſes as aforeſaid, and with whom he was about to contract matrimony as aforeſaid, on occaſion of the ſpeaking and publiſhing of the ſaid words, and of her ſuſpicions and prejudices conſequent upon the ſame, and on no other account whatſoever, from the time of the ſpeaking of the ſaid words hitherto hath declined and refuſed to receive the addreſſes of the ſaid John, and hath altogether refuſed to contract matrimony with, or to marry or take him to huſband, whereby he the ſaid John hath loſt and been deprived of all fortune, preferment, and advantage that would have ariſen and reſulted from ſuch marriage, to wit, at, &c.; to the damage of the ſaid John of ten thouſand pounds; and therefore, &c. V. LAWES.

LONDON, to wit. The rev. Henry Perfect complains of the rev. J. Reeves, clerk, being, &c.; for that whereas ſaid plaintiff now is a good, true, honeſt, juſt, and faithful ſubject of this realm, and as ſuch from the time of his nativity hitherto hath always behaved and governed himſelf, and has during all the time aforeſaid till the time of the ſpeaking and publiſhing of the defamatory words and ſlanders hereafter mentioned been ſaid, held, eſteemed, and reputed amongſt all his neighbours and other worthy ſubjects of this realm to be a man of good name, fame, credit, and reputation: And whereas the ſaid plaintiff now is, and for divers years now laſt paſt hath been a clerk or clergyman of the church of England as by law eſtabliſhed in holy orders, and during all that time hath ſuſtained and conducted himſelf in the function or character of a clergyman with piety and morality, without being guilty, or until the time of the ſpeaking, &c. of the falſe, malicious, and defamatory words and ſlanders hereafter mentioned to have been ſpoken and publiſhed concerning him been ſuſpected of having been guilty of the leaſt impoſition, deceit, or falſehood: And whereas the ſaid plaintiff, before and at the time of the ſpeaking, &c. of the ſeveral falſe, &c. hereafter mentioned, had occaſionally officiated and exerciſed his function of a clerk or clergyman in the parochial church of Weſtham, in the county of Eſſex, and elſewhere; by means of which ſeveral and reſpective premiſes he the ſaid plaintiff not only before the ſpeaking of the falſe, &c. words hereinafter mentioned concerning him, deſervedly obtained and procured to himſelf the benevolence and good opinion not only of the pariſhioners and inhabitants of the ſaid pariſh of W. aforeſaid in the church of which he had ſo as aforeſaid occaſionally

Declaration: B. R. for ſpoken of *clergyman*, wit, that he no clerg whereby pl tiff loſt ſional duty,

Inducement

officiated

officiated and acted as clerk or clergyman, but alſo of all other perſons with whom he was any ways acquainted, or to whom he was known, and alſo daily acquired ſundry large ſums of money for officiating and performing divine ſervice as well in the aforeſaid pariſh church as elſewhere, to the very comfortable ſupport of himſelf and his family, and the increaſe of his riches, to wit, at, &c.; yet the ſaid defendant, well knowing all and ſingular the premiſes aforeſaid, but contriving not only to injure and damnify the ſaid plaintiff in his aforeſaid good name, &c. but alſo to injure and degrade him in his aforeſaid profeſſion, function, or character of a clerk or clergyman, and alſo to cauſe it to be believed and ſuſpected that the ſaid plaintiff was not a clerk or clergyman in holy orders, but an impoſtor, and one who had only aſſumed ſuch character, and one who was guilty of deception and falſe-
quium. hood, heretofore, to wit, on, &c. in a certain diſcourſe which he the ſaid defendant then and there had with divers good and worthy ſubjects of this realm, inhabitants and pariſhioners in and of the aforeſaid pariſh of W. of and concerning the ſaid plaintiff, and of and concerning his officiating and performing divine ſervice in the ſaid pariſh church of W. as aforeſaid, he the ſaid defendant then and there, in the preſence and hearing of thoſe ſubjects, falſely, &c. ſaid, &c. theſe falſe, &c. words following of and concerning the ſaid plaintiff and his officiating and performing divine ſervice
Fonds. in the ſaid pariſh church of W. as aforeſaid; that is to ſay, "He (meaning the ſaid plaintiff) is no clergyman; he (again meaning the ſaid plaintiff) is not ordained" (meaning the ſaid plaintiff was not, nor ever had been admitted into holy orders): [2d Count, like colloquium words, "He (meaning the ſaid plaintiff) is an impoſtor, not in holy orders" (meaning and inſinuating thereby that he the ſaid plaintiff had impoſed upon the pariſhioners and inhabitants of the aforeſaid pariſh of W. by officiating and performing divine ſervice in the church of the ſame pariſh as a clerk or clergyman as aforeſaid, when in truth and in fact the ſaid plaintiff was not in holy orders): 3d Count, colloquium words, "He (meaning, &c.) is no clergyman" (meaning that the ſaid plaintiff was no clerk or clergyman, nor had ever been admitted into holy orders, and alſo meaning and inſinuating by the falſe and defamatory words laſt mentioned that the ſaid plaintiff had impoſed on the pariſhioners and inhabitants of the ſaid pariſh of W. by officiating and performing divine ſervice therein as a clerk or clergyman as aforeſaid): 4th Count, colloquium of and concerning plaintiff, and of and concerning his exerciſing the function or calling of a clerk or clergyman as aforeſaid. Words: "He is an impoſtor and not in orders" (meaning and inſinuating thereby that the ſaid plaintiff was not a clerk or, &c. in holy orders as aforeſaid, and that he had impoſed on people in ſuch character which he had aſſumed): 5th Count, colloquium of and concerning plaintiff, and of and concerning his profeſſing to be and acting as a clerk or, &c. as aforeſaid. Words: "He is no clergyman" (thereby meaning that the ſaid plaintiff was not a clerk or clergyman of the church of

England

England in holy orders as he pretended to be): And afterwards, 2d Count.
to wit, on, &c. at, &c. in a certain other diſcourſe which the ſaid defendant then and there had with divers other good and worthy ſubjects of this realm, pariſhioners and inhabitants of the ſaid pariſh of W. of and concerning ſaid plaintiff, and alſo of his having officiated and acted in the church of the ſame pariſh as clerk or, &c. as aforeſaid, he the ſaid defendant, of his further malice againſt the ſaid plaintiff, and contriving and intending as aforeſaid, then and there falſely, &c. publiſhed of and concerning the ſaid plaintiff, and alſo concerning his having officiated and acted in the aforeſaid pariſh-church of W. as a clerk or, &c. as aforeſaid a certain falſe, &c. ſlander to the tenor and effect following, to wit, "That he the ſaid plaintiff was not a clergyman, but an impoſtor" (meaning that he the ſaid plaintiff was not a clerk or, &c. of the eſtabliſhed church of England in holy orders aforeſaid, but that he had aſſumed ſuch character, and thereby impoſed on the pariſhioners and inhabitants of the ſaid pariſh of W.): Another Count like the laſt, for ſaying "That plaintiff was not in orders:" By means of the ſpeaking, &c. the ſaid plaintiff is not only injured and damnified in his aforeſaid good name, &c. and alſo greatly prejudiced and degraded in his aforeſaid profeſſion, function, or calling of a clerk or clergyman in holy orders, not only in the aforeſaid pariſh of W. and elſewhere, and amongſt the pariſhioners and inhabitants thereof reſpectively, but the ſaid plaintiff in fact further ſaith, that by means of the ſpeaking, &c. of the aforeſaid words and ſlanders reſpectively he the ſaid plaintiff hath always, from the time of the ſpeaking, &c. of the ſame, been hindered and prevented from officiating and performing divine ſervice in the aforeſaid church of W. as he was uſed and accuſtomed to do, and otherwiſe would have done, ſeveral of the pariſhioners and inhabitants of the ſaid pariſh giving credit to the aforeſaid aſſertions of the ſaid defendant, and believing the ſaid plaintiff is not a clerk or, &c. in holy orders as aforeſaid, but an impoſtor, whereby the ſaid plaintiff for and during all that time hath loſt and been deprived of all benefit and advantage that would have ariſen and accrued to him from continuing to officiate as clerk or, &c. in the ſaid pariſh church of W. as before he was accuſtomed to do: And divers other good and worthy ſubjects of this realm, giving credit to the aforeſaid falſe and malicious aſſertions of the ſaid defendant in manner aforeſaid made, have always from the making of the ſame hitherto ſuſpected the plaintiff not to be a clerk or, &c. in holy orders, but to have aſſumed ſuch character merely, and to be an impoſtor, and a perſon guilty of deception and falſehood, and they daily more and more refuſe to have any commerce, acquaintance, or diſcourſe with, or to have any thing to do with him: And the ſaid plaintiff was, hath been, and ſtill is, on occaſion of the ſeveral premiſes aforeſaid, otherwiſe greatly injured and damnified, to wit, at, &c.; to the ſaid plaintiff his damage of five hundred pounds; and therefore he brings ſuit, &c. V. LAWES.

Declaration for words ſpoken of a juſtice of peace in the office, to the diſcredit in paſſing accounts of a ſurveyor of the highways.

HERTFORDSHIRE, to wit. For that whereas the ſaid plaintiff, long before, and at the time of the ſpeaking, &c. of the ſeveral falſe, &c. words hereafter mentioned to have been ſpoken and publiſhed by the ſaid defendant to, of, and concerning the ſaid plaintiff, was, and from thence hitherto hath been, and ſtill is, one of the juſtices of our lord the king aſſigned to keep the peace of our ſaid lord the king, in and for the *liberty of St. Albans, in the county of H.* and alſo to hear and determine divers felonies and other miſdemeanors committed in the ſaid liberty, and during all that time governed and conducted himſelf in his ſaid office with juſtice, uprightneſs, and integrity, to wit, at, &c.: And whereas the ſaid plaintiff, as ſuch juſtice as aforeſaid, before the ſpeaking, &c. of the ſaid ſeveral falſe, &c. words hereafter mentioned to have been ſpoken and publiſhed by the ſaid defendant to, of, and concerning the ſaid plaintiff in his ſaid office of juſtice of, &c. as aforeſaid, in the manner aforeſaid, allowed certain accounts of one W. T. then one of the late ſurveyors of the highways in, of, and belonging to the aforeſaid pariſh of, &c. and on that occaſion acted with the utmoſt juſtice and honeſty in his aforeſaid office of a juſtice of peace, to wit, at, &c.; yet the ſaid defendant well knowing, &c. but contriving, &c. to injure the ſaid plaintiff, ſo being ſuch juſtice as aforeſaid, and to cauſe it to be believed that he the ſaid plaintiff had acted unjuſtly and corruptly in his ſaid office of, &c. not only in allowing the aforeſaid accounts of the ſaid W. T. as ſuch ſurveyor of the ſaid highways of the aforeſaid pariſh of, &c. but in other reſpects heretofore, to wit, on, &c. at, &c. aforeſaid, at and in a certain veſtry of the inhabitants of the ſaid pariſh of, &c. then and there aſſembled for the purpoſe of inſpecting, deliberating upon, and examining (amongſt other things reſpecting the ſaid pariſh) the accounts of the then ſurveyors of the ſaid pariſh, when there was a charge of money paid by them the ſaid ſurveyors to the ſaid W. T. in diſcharge of, &c. ſaid accounts of him the ſaid W. T. ſo allowed by the ſaid plaintiff as ſuch juſtice as aforeſaid, he the ſaid defendant on the production of the aforeſaid accounts of the ſaid W. T. at and in ſuch veſtry as aforeſaid, and on his being informed by the ſaid plaintiff who was then and there preſent at and in ſuch veſtry, and compoſed a part thereof, that the ſaid accounts of the ſaid W. T. as ſuch ſurveyor of the highways of, &c. aforeſaid, were allowed by him the ſaid plaintiff as ſuch juſtice as aforeſaid, then and there falſely, &c. ſaid to plaintiff, ſo being ſuch juſtice as aforeſaid, at and in ſuch veſtry as aforeſaid, and in the preſence and hearing of the ſeveral other perſons then and there preſent in, and at, and in part compoſing the ſame, theſe falſe, &c. words following, to wit, "I (meaning himſelf the ſaid defendant) thought ſo (meaning and inſinuating thereby that ſuch accounts of the ſaid W. T. were unfair, and that the ſaid plaintiff had acted corruptly in his aforeſaid office of juſtice of, &c. in allowing the ſame); and you (meaning the ſaid plaintiff) did great injuſtice to the pariſh (meaning the aforeſaid

aforeſaid pariſh of E.) when you (meaning again the ſaid plaintiff) allowed thoſe accounts of the ſaid W. T. as one of the ſurveyors of the ſaid pariſh of E. as aforeſaid, and what no other juſtice would have done (meaning and inſinuating thereby that the ſaid plaintiff in the allowance of the aforeſaid accounts of the ſaid W. T. acted corruptly and againſt the duty of his ſaid office of, &c. as aforeſaid); and you (again meaning the ſaid plaintiff) would ſign or allow any thing, juſt or unjuſt" (thereby meaning that the ſaid plaintiff in the execution of his ſaid office of, &c. had no regard to juſtice or equity, but acted corruptly and diſhoneſtly): And upon the ſaid plaintiff then and there expoſtulating with the ſaid defendant upon his aforeſaid falſe, &c. aſſertion reſpecting him the ſaid plaintiff in his aforeſaid office of, &c. as aforeſaid, he the ſaid defendant then and there, in the ſaid veſtry of the aforeſaid pariſh of E. ſo holden as aforeſaid, and in the preſence, &c. of the ſeveral other perſons then and there preſent, and at, and in part compoſing ſuch veſtry, falſely, &c. aſſerted and ſaid, that "it was injuſtice" (thereby again meaning, &c. the ſaid plaintiff had acted corruptly in his aforeſaid office of, &c. in allowing the aforeſaid accounts of the ſaid W. T.): And the ſaid plaintiff in fact further ſaith, that he afterwards, to wit, on, &c. in a certain other diſcourſe which he the ſaid defendant then there had with divers good, &c. of this realm of and concerning the ſaid plaintiff in his aforeſaid office of, &c. and alſo concerning his allowing of the aforeſaid accounts of the ſaid W. T. as one of the ſurveyors of the highways of, &c. as aforeſaid, he the ſaid defendant, contriving, &c. as aforeſaid, falſely, &c. ſaid, &c. of and concerning the ſaid plaintiff in his aforeſaid office, and alſo concerning his allowing the ſaid accounts of the ſaid W. T. in the preſence, &c. of thoſe laſt-mentioned ſubjects, theſe other falſe, &c. words, to wit, "He (meaning, &c.) did what no other juſtice would have done" (meaning, &c. thereby that the ſaid plaintiff in the allowance of the ſaid accounts of the ſaid W. T. as one of the ſurveyors of the highways of the aforeſaid pariſh of E. as aforeſaid, acted corruptly and againſt the duty of the aforeſaid office of, &c.): [There were other Counts ſimilar to the foregoing]: By reaſon and means of the ſpeaking, &c. of which ſaid ſeveral falſe, &c. words hereinbefore mentioned to have been ſpoken, &c. by the ſaid defendant, it has been generally believed and ſuſpected by the inhabitants and pariſhioners of the aforeſaid pariſh of E. and by many other good, &c. that the ſaid plaintiff in allowing ſuch accounts of the ſaid W. T. as aforeſaid, acted corruptly and unjuſtly, and againſt the duty of his ſaid office of, &c. and he the ſaid plaintiff alſo was, hath been, and ſtill is, on occaſion of the ſpeaking, &c. of thoſe words, eſteemed and taken to be a corrupt and partial juſtice, and a diſhoneſt and unjuſt magiſtrate; and he is alſo on occaſion of the premiſes aforeſaid, fallen into great ſcandal, &c. and otherwiſe injured and damnified, to wit, at, &c. Damage one thouſand pounds; ſuit, &c. V. LAWES.

2d Count general.

Plaintiff obtained a verdict for 10l. damages.

In words by defendant's wife against the plaintiff's wife, whereby he kept a ſmall number of ſcholars.

MIDDLESEX, to wit. John Mumbler, Elizabeth his wife, were attached to anſwer John Eater, &c.; for that whereas the ſaid plaintiff, at the time of the ſpeaking and publiſhing the ſeveral falſe, feigned, ſcandalous, opprobrious, and malicious words hereafter mentioned to have been ſpoken by the ſaid Elizabeth of and concerning the ſaid J. E. and Elizabeth his wife, kept a certain ſchool or academy for teaching and inſtructing by himſelf and his ſaid wife, infant children; and he the ſaid J. E. and his ſaid wife were perſons of good name, fame, credit, and reputation, and by means of keeping ſuch ſchool or academy, he the ſaid J. E. was daily acquiring divers great gains and profits to the comfortable ſupport and maintenance of himſelf and family, and the increaſe of his riches: And whereas before and at the time of the ſpeaking and publiſhing the ſeveral falſe, &c. words hereafter mentioned, a certain infant daughter of one A. B. was a ſcholar of the ſaid J. E. and under the care, tuition, and inſtruction of him the ſaid J. E. and his ſaid wife, at his aforeſaid ſchool or academy, and was likely to continue there; and the ſaid ſchool or academy was then and there in great eſteem and repute, and the children ſent there for inſtruction were properly taught and inſtructed, and carefully and tenderly treated, to wit, at, &c.; yet the ſaid Elizabeth Mumbler, well knowing the premiſes, but contriving to injure the ſaid J. E. and to bring him and his ſaid wife into public hatred, ſcandal, and diſgrace, and to injure him in his ſaid buſineſs of a ſchool-maſter, heretofore, to wit, on, &c. at, &c. in a certain diſcourſe which the ſaid E. M. then and there had with divers good and worthy ſubjects of this realm, of and concerning the ſaid J. E. and his ſaid wife, and the aforeſaid ſchool ſo by him kept as aforeſaid, ſhe the ſaid E. M. then and there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed theſe falſe, &c. Engliſh words following, of and concerning the ſaid J. E. and his ſaid wife, and their aforeſaid ſchool, in the preſence and hearing of thoſe ſubjects, that is to ſay, "She (meaning the ſaid Elizabeth the wife of the ſaid J. E.) is a hump back bitch, a hump back whore, and ſhe (meaning the ſaid wife of the ſaid J. E.) is more fit to keep fiſh at Billingſgate than keep a ſchool" (thereby meaning and inſinuating that the ſaid Elizabeth, the wife of the ſaid J. E. was unfit to keep, or to inſtruct at the ſaid ſchool ſo kept by her and the ſaid J. E. as aforeſaid, and thereby meaning and inſinuating that it was improper to place or put children under the care and inſtruction of the ſaid J. E. and his ſaid wife at their ſaid ſchool): And afterwards, to wit, on, &c. in a certain other diſcourſe which ſhe the ſaid E. M. then and there had with divers other good and worthy ſubjects of this realm, of and concerning him the ſaid J. E. and his ſaid wife, and his ſaid ſchool or academy, ſhe the ſaid Elizabeth then and there falſely and maliciouſly ſaid, &c. theſe other falſe, &c. words following of and concerning them the ſaid J. E. and his ſaid wife, and his ſaid ſchool or academy, that is to ſay, "They (meaning the ſaid J. E. and his ſaid wife) are not fit to keep a ſchool. A fine academy over

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the way! (thereby meaning and intending to throw diſgraceful reflections on the ſaid ſchool ſo kept by the ſaid J. E. as aforeſaid, and to have it thought and believed that the ſame was a very unfit and improper place for the education of youth); "ſhe (meaning the ſaid Elizabth the wife of the ſaid J. E.) is a hump back whore, a hump back bitch, and ſhe (meaning the ſaid Elizabeth the wife of the ſaid J. E.) is fitter to ſell fiſh at Billingſgate than to keep a ſchool:" And afterwards, to wit, on, &c. at, &c. in a certain other diſcourſe which ſhe the ſaid E. M. then and there had with divers other good and worthy ſubjects of this realm, of and concerning the ſaid J. E. and his ſaid wife, and their aforeſaid ſchool or academy, ſhe the ſaid E. M. then and there falſely and maliciouſly ſaid, &c. Engliſh words following, of and concerning the ſaid J. E. and his ſaid wife, and their aforeſaid ſchool, or academy, in the preſence and hearing of thoſe laſt-mentioned ſubjects, that is to ſay, "They (meaning the ſaid J. E. and his ſaid wife) are not fit to keep a School, for they (meaning the ſaid J. E. and his ſaid wife) are two blackguards, and the neighbours all know what bad people they (meaning the ſaid J. E. and his ſaid wife) are; there cannot be two greater blackguards than they (meaning the ſaid J. E. and his ſaid wife) are," (thereby meaning and inſinuating that the ſaid J. E. and his ſaid wife were improper perſons to have the care, education, or inſtruction of youth): And afterwards, to wit, on, &c. in a certain other diſcourſe which the ſaid E. M. then and there had with divers other good and worthy ſubjects of this realm, of and concerning the ſaid J. E. and his ſaid wife, and their aforeſaid ſchool or academy, ſhe the ſaid E. M. then and there falſely and maliciouſly ſaid, &c. Engliſh words following, of and concerning the ſaid J. E. and his ſaid wife, and their aforeſaid ſchool or academy, in the preſence and hearing of thoſe laſt-mentioned ſubjects, that is to ſay, "If I (meaning herſelf the ſaid E. M.) knew where the parents lived belonging to the children (meaning the ſcholars at the ſaid ſchool ſo kept by the ſaid J. E. as aforeſaid) I (meaning herſelf the ſaid E. M.) would go and complain to them that Mrs. Evans (meaning the ſaid Elizabeth the wife of the ſaid J. E.) miſuſed the children," (thereby meaning and inſinuating that the children ſent to the ſaid ſchool of the ſaid J. E. for inſtruction, were not tenderly treated, but were treated with inhumanity by the ſaid Elizabeth the wife of the ſaid J. E.): And afterwards, to wit, on, &c. at, &c. in a certain other diſcourſe which ſhe the ſaid E. M. then and there had with divers other good and worthy ſubjects of this realm, of and concerning the aforeſaid ſchool or academy ſo kept by the ſaid J. E. as aforeſaid, ſhe the ſaid E. M. then and there falſely and maliciouſly ſaid, &c. words following, of and concerning the aforeſaid ſchool ſo kept by the ſaid J. E. as aforeſaid, in the preſence and hearing of thoſe ſubjects, to wit, "The ſchool (thereby meaning the aforeſaid ſchool ſo kept by the ſaid J. E. as aforeſaid) is more like a bawdy houſe than a ſchool," (thereby meaning and inſinuating that the ſaid ſchool ſo kept by the ſaid J. E. was a houſe of

3d Count.

4th Count.

5th Count.

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ill fame, and a houſe where improper and indecent intercourſe took place and was carried on between perſons of both ſexes, to the evil example and corruption of the morals of the ſcholars and children entruſted to the care and inſtruction of the ſaid J. E. at his ſaid ſchool): And afterwards, to wit, on, &c. at, &c, in a certain other diſcourſe which ſhe the ſaid E. M. then and there had with Ann the wife of the ſaid A. B. who had ſuch child at the ſaid ſchool of the ſaid J. E. as aforeſaid, of and concerning the ſaid J. E. and his ſaid wife, and their aforeſaid ſchool or academy, ſhe the ſaid E. M. then and there falſely and maliciouſly ſaid, &c. Engliſh words following, of and concerning the ſaid J. E. and his ſaid wife, and their aforeſaid ſchool or academy, that is to ſay, "I (meaning herſelf the ſaid E. M.) am come to make a complaint of your daughter, (meaning the ſaid child of the ſaid A. B. which was ſo under the care and inſtruction of the ſaid J. E. and his ſaid wife as aforeſaid, at his aforeſaid ſchool or academy), for whenever ſhe (again meaning the ſaid child of the ſaid A. B.) comes to ſchool (meaning the ſaid ſchool or academy ſo kept by the ſaid J. E. as aforeſaid) ſhe (meaning the ſaid child of the ſaid A. B.) knocks at my (meaning at her the ſaid E. M.'s) door, and behaves very rude, and her maſter and miſtreſs (meaning the ſaid J. E. and his ſaid wife) give her encouragement (thereby meaning and inſinuating that the ſaid child of the ſaid A. B. which was ſo under the care and inſtruction of the ſaid J. E. and his ſaid wife as aforeſaid, was not properly inſtructed in good manners, but on the contrary, was encouraged by the ſaid J. E. and his ſaid wife in rudeneſs), and let her, (meaning the ſaid child of the ſaid A. B.) run about the ſtreets for an hour or two together with a boy that lodges at the chandler's ſhop, and I myſelf (meaning herſelf the ſaid E. M.) ſaw her (meaning the ſaid child of the ſaid A. B.) yeſterday for half an hour ſtanding in the chandler's ſhop paſſage with the boy; as to her maſter and miſtreſs (meaning the ſaid J. E. and his ſaid wife) they are not fit to keep a ſchool (again meaning the ſaid J. E. and his ſaid wife), they are two blackguards, and the neighbours all know what bad people they (again meaning the ſaid J. E. and his ſaid wife) are; ſhe (meaning the ſaid Elizabeth the wife of the ſaid J. E.) run in debt at the chandler's ſhop, and when the people aſked for it, ſhe (again meaning the ſaid Elizabeth the wife of the ſaid John) mobbed them; there cannot be two greater blackguards than they (meaning the ſaid J. E. and his ſaid wife) are," (meaning and inſinuating, and by the ſaid words ſo ſpoken by the ſaid E. M. as laſt aforeſaid, intending to have it underſtood and be believed, that the ſaid J. E. and his ſaid wife were unfit and improper perſons to have the care, education, and inſtruction of the ſaid child or daughter of the ſaid A. B. that they the ſaid J. E. and his ſaid wife were perſons of low and ill bred manners and behaviour, and that for want of due and proper care and attention of them, the manners and morals of the ſaid child of the ſaid A. B. the ſaid child had contracted rude and unbecoming manners and behaviour, and bad and vicious habits): By means of the ſpeaking

ing of which ſaid ſeveral falſe, &c. words, the ſaid J. E. was and is greatly hurt, prejudiced, and injured in his aforeſaid good name, fame, credit, and reputation, and is fallen into great hatred, ſcandal, and diſgrace and divers perſons, who had before that time committed the care and education of their children to him the ſaid J. E. and his ſaid wife, have, on occaſion of the premiſes, and on no other account whatever, withdrawn and taken the ſame away from his ſaid ſchool, and wholly and abſolutely refuſed, and ſtill do refuſe to ſend them there again, or put them under his care; and divers other perſons, who otherwiſe would have their children to his ſaid ſchool or academy, have, on this account wholly omitted and neglected ſo to do, and in particular, the ſaid J. E. ſaith, that by reaſon of the ſpeaking and publiſhing of the aforeſaid falſe and defamatory words, the aforeſaid A. B took away his ſaid child or daughter from the care, education, and inſtruction of the ſaid J. E. at his aforeſaid ſchool or academy, whereby he the ſaid J. E. hath loſt and been deprived of all benefit and advantage that otherwiſe would have ariſen and accrued to him from continuing the ſaid child at the ſaid ſchool, and under the care and inſtruction of him the ſaid J. E. to wit, at, &c., to the damage, &c.

I have drawn the beſt declaration I can upon this caſe, but on the whole think it too doubtful both in point of law and in fact for the plaintiff to riſk a trial upon

V. Lawes.

Firſt, Not guilty. 2d, And for further plea in this behalf, as to the ſpeaking and publiſhing of ſuch of the ſaid words in the ſaid declaration mentioned, and thereby ſuppoſed to have been ſpoken and publiſhed by the ſaid Elizabeth the wife of the ſaid J. M. of and concerning the ſaid J. E. and Elizabeth his wife, as relate to the ſaid Elizabeth being an unfit and improper perſon to keep the ſaid ſchool in the ſaid declaration mentioned, the ſaid J. M. and Elizabeth his wife, by leave of, &c. *actio non*; becauſe they ſay, that ſhe the ſaid Elizabeth, before and at the ſaid ſeveral times when, &c. was an unfit and improper perſon to keep the ſaid ſchool in the ſaid declaration mentioned, to wit, at, &c for which reaſon the ſaid Elizabeth the wife of the ſaid J. M. at the ſaid ſeveral times when, &c. did ſpeak and publiſh, of and concerning the ſaid Elizabeth ſuch of the ſaid words in the ſaid declaration mentioned, and thereby alledged to have been ſo ſpoken and publiſhed by the ſaid Elizabeth the wife of the ſaid J. M. as relate to the premiſes aforeſaid, and as ſhe lawfully might for the cauſe aforeſaid, and this, &c., wherefore, &c. if, &c.

S. Le Blanc.

And the ſaid J. E. as to the ſaid plea of the ſaid J. M. and Elizabeth his wife, by them ſecondly above pleaded in bar, as to the ſpeaking and publiſhing ſuch of the ſaid words in the ſaid declaration mentioned, and by the ſecond plea confeſſed to have been

ſpoken

ſpoken and publiſhed by the ſaid Elizabeth the wife of the ſaid J. M. of and concerning the ſaid J. E. and Elizabeth his wife, as relate to the ſaid Elizabeth being an unfit and improper perſon to keep the ſaid ſchool in the ſaid declaration mentioned, ſays, that he the ſaid J. E. ought not to be barred from having and maintaining his ſaid action thereof againſt them; becauſe he ſays that the ſaid E. M. at the ſaid ſeveral times when, &c. of her own wrong and without any ſuch cauſe as is by them the ſaid J. M. and Elizabeth his wife in their ſecond plea in that behalf alledged, to wit, at, &c. ſpoke and publiſhed of and concerning the ſaid Elizabeth ſuch of the ſaid words in the ſaid declaration mentioned, and thereby alledged and by the ſaid ſecond plea admitted to have been ſpoken and publiſhed by the ſaid E. M. the wife of the ſaid J. M. as relate to the premiſes aforeſaid, in manner and form as the ſaid J. E. hath above thereof complained againſt them the ſaid J. M. and Elizabeth his wife; and this he the ſaid J. E. prays may be enquired of by the country; and the ſaid J. M. and E. his wife do the like; therefore, &c. &c. V. LAWES.

MIDDLESEX, to wit. Charles Rompett, gentleman, one of the attorneys of the court of our lord the king, before the king himſelf preſent here in court, in his own perſon, according to the liberties and privileges of the ſaid court for ſuch miniſters and other officers of the ſaid court from time immemorially uſed and approved of, complains of Samuel Ginger, gentleman, one other of the attornies of the ſaid court of our lord the king, before the king himſelf preſent here in court, in his own proper perſon, of a plea of treſpaſs on the caſe; for that whereas he the ſaid Charles now is a good, true, honeſt, juſt, and faithful ſubject of this kingdom, and as ſuch hath always behaved and governed himſelf until the ſpeaking and publiſhing the ſeveral falſe, ſcandalous, malicious, and defamatory words hereafter mentioned to have been ſpoken and publiſhed by the ſaid Samuel of and concerning the ſaid Charles, was always eſteemed and conſidered as a perſon of good name, fame, credit, and reputation, and had deſervedly obtained and acquired the benevolence, good opinion, and credit of all his neighbours, and of other good and worthy ſubjects of this kingdom: And whereas he the ſaid Charles, at the time of the ſpeaking and publiſhing of the ſeveral falſe, &c. hereafter mentioned, was, and long before had been, and from thence hitherto hath been, and ſtill is, one of the attornies of the court of our lord the king now here, and in the office, practice, and buſineſs of an attorney at law, has been during all that time retained and employed by divers ſubjects of this realm to proſecute and defend for them, and, as their attorney, agent, and ſolicitor, divers ſuits and buſineſſes in this court, and in other his majeſty's courts at Weſtminſter and elſewhere, and alſo to do and negociate other affairs and buſineſs; and the ſaid Charles hath, during all that time tranſacted and carried on all ſuch cauſes, ſuits, and buſineſſes

with

with care, judgment, integrity, and reputation, without being guilty, and until the ſpeaking and publiſhing the ſeveral falſe, &c. hereafter mentioned, been ſuſpected of having been guilty of taking or accepting bribes in the courſe of his ſaid practice or profeſſion, or of any other ſpecies of mal-practice or miſconduct in his ſaid profeſſion: And whereas the ſaid Charles, before the ſpeaking and publiſhing of the ſeveral falſe, &c. hereafter mentioned, had been and was in his ſaid buſineſs or profeſſion employed by one Matthew Gobber, now deceaſed, to commence and proſecute a certain action or ſuit at law in this court here, wherein he the ſaid Matthew Gobber was plaintiff, and one J. S. and one G. G. were defendants, and in which ſaid action the ſaid J. S. had been and was ſurrendered into the cuſtody of the marſhal of the Marſhalſea of our lord the now king, before the king himſelf, at the ſuit of the ſaid Matthew Gobber, but afterwards ſuperſeded and diſcharged from and out of ſuch cuſtody without any default, omiſſion, or neglect in or by the ſaid Charles as ſuch attorney in the ſaid action or ſuit, on the contrary the ſaid Charles, in the proſecuting, carrying on, and conducting the ſaid action or ſuit, behaved and conducted himſelf with great care, integrity, and honeſty, and according to his duty as ſuch attorney for the ſaid M. G. therein as aforeſaid; and the ſaid Charles had acquired and was daily acquiring great gains and riches in and by his ſaid buſineſs and profeſſion of an attorney at law, to the comfortable ſupport of himſelf and his family, and the increaſe of his riches, to wit, at, &c. in, &c.; yet the ſaid Samuel, well knowing the premiſes, but contriving, &c. the ſaid Charles in his aforeſaid good name, &c. and in his ſaid buſineſs or profeſſion of an attorney at law, and to cauſe him to be eſteemed and taken to be a diſhoneſt and corrupt practiſer in his ſaid profeſſion, and to be a perſon not fit to be truſted and employed therein, and to impoveriſh and wholly ruin him, heretofore, to wit, on, &c. at, &c. in a certain diſcourſe which the ſaid Samuel then and there had with one Elizabeth Gobber (*who was then and there the* adminiſtratrix *of the goods and chattels* of the ſaid M. G. deceaſed) of and concerning the ſaid Charles in his ſaid profeſſion of an attorney at law, and of and concerning the ſaid action or ſuit ſo brought againſt the ſaid J. S. as aforeſaid, and his aforeſaid diſcharge out of cuſtody, he the ſaid Samuel then and there falſely and maliciouſly ſaid, rehearſed, and publiſhed to the ſaid E. G. *ſo being the adminiſtratrix of the ſaid M. G. as aforeſaid*, theſe (1) falſe, &c. following, of and concerning the ſaid Charles (1) in his ſaid profeſſion of an attorney at law, and of and concerning the ſaid action or ſuit ſo brought againſt the ſaid J. S. as aforeſaid, and his aforeſaid diſcharge out of cuſtody, that is to ſay, "The diſcharge of J. S. (meaning the aforeſaid J. S.) out of priſon (thereby meaning and alluding to the ſaid diſcharge of the ſaid J. S. from and out of cuſtody in the ſaid action or ſuit ſo brought againſt him as aforeſaid) was a contrived thing between him (meaning the ſaid J. S.) and Mr. Rompett," (meaning the ſaid Charles, and alſo meaning and inſinuating BY THE SAID SEVERAL WORDS SO SPOKEN

SPOKEN OF AND CONCERNING THE SAID CHARLES AS AFORESAID, that the ſaid diſcharge of the ſaid J. S. FROM AND out of cuſtody had been obtained by the CONNIVANCE AND contrivance of the ſaid Charles, and that the ſaid Charles had on that occaſion behaved corruptly and diſhoneſtly in the exerciſe and practice of his ſaid profeſſion of an attorney at law): And whereas afterwards, to wit, on, &c. in a certain other diſcourſe which the ſaid Samuel then and there had with the ſaid Elizabeth Gobber, &c. &c. [2d Count ſame as firſt, omitting what is in Italic]: And whereas, &c. &c. [3d Count ſame as the ſecond Count, only omitting what is in ſmall capitals]: And whereas afterwards, to wit, on, &c. at, &c. in a certain other diſcourſe, &c. of and concerning the ſaid Charles, &c. he the ſaid Samuel then and there falſely and maliciouſly ſaid, &c. to the ſaid E. G. theſe other falſe, &c. of and concerning the ſaid Charles in his ſaid profeſſion of, &c. and of and concerning the ſaid action or ſuit ſo brought, &c. and his aforeſaid diſcharge out of cuſtody, that is to ſay, "He (meaning the ſaid Charles) took a bribe from J. S. (meaning the aforeſaid J. S.) to let him (again meaning the ſaid J. S.) out of priſon (thereby *meaning and* alluding to the ſaid diſcharge of the ſaid J. S. out of cuſtody in the ſaid action or ſuit ſo brought, &c.); *but did not do it out of ignorance,*" (thereby meaning and inſinuating that *the ſaid diſcharge of the ſaid J. S. out of cuſtody was not the effect of any ignorance in the ſaid Charles, but that* the ſaid Charles *voluntarily ſuffered and permitted ſuch diſcharge, and that he* accepted of a bribe *or reward from the ſaid J. S.* for permitting ſuch diſcharge, and that the ſaid Charles had on that occaſion, &c. &c. [as before]: And whereas, &c. &c. [This Count as the fourth, omitting the Italic]: And whereas on, &c. at, &c. in a certain other diſcourſe, &c. with one William Phelps, of and concerning the ſaid Charles in his ſaid profeſſion of, &c. and of and concerning the ſaid action, &c. and his aforeſaid diſcharge, &c. and alſo of and concerning a certain action or ſuit which had been before then brought againſt the ſaid Charles by the ſaid E. G. as ſuch adminiſtratrix of the ſaid M. G. as aforeſaid, for and on account of ſuch diſcharge, as being by and through the negligence and miſconduct of the ſaid Charles in the conduct of the ſaid action or ſuit againſt the ſaid J. S. and in which ſaid action he the ſaid Samuel was then and there concerned as attorney of and for the ſaid Elizabeth, he the ſaid Samuel in anſwer to certain queſtions and obſervations then and there reſpectively made and put by the ſaid W. P. to the ſaid Samuel as to the ſaid Charles in his ſaid profeſſion of an attorney at law, and as to the ſaid action ſo brought againſt him on account of the ſaid diſcharge of the ſaid J. S. out of cuſtody as aforeſaid, and the grounds there were for ſuch action, then and there falſely and maliciouſly ſaid, &c. to the ſaid W. P. theſe other falſe, &c. following, of and concerning the ſaid Charles in his ſaid profeſſion of, &c. and of and concerning the aforeſaid diſcharge of the ſaid J. S. out of cuſtody as aforeſaid, and of and concerning the ſaid action ſo brought againſt the ſaid Charles upon

5 Count.
6 Count.

account

account of ſuch diſcharge as aforeſaid, and the grounds and foundation for ſuch action, that is to ſay, "I (meaning himſelf the ſaid Samuel) am concerned in a cauſe (meaning the ſaid action or ſuit ſo brought againſt the ſaid Charles as aforeſaid, and wherein the ſaid Samuel was ſo concerned as attorney for the ſaid E. G. as aforeſaid) that the iſſue will prove whether he (meaning the ſaid Charles) has done as he (again meaning the ſaid Charles) ought to do; if he (again meaning the ſaid Charles) is clear of any reproach (meaning if there was no foundation for the ſaid action or ſuit ſo brought againſt the ſaid Charles as aforeſaid) why not come forward and try the cauſe (meaning the ſaid action or ſuit ſo brought againſt the ſaid Charles as aforeſaid), without litigiouſly filing ſeveral bills in the exchequer," (thereby meaning and inſinuating that the conduct of the ſaid Charles in the courſe of the ſaid action or ſuit ſo brought againſt the ſaid J. S. as aforeſaid, had been ſuch as merited reproach and cenſure, and alſo ſuch as was a good ground and foundation for the ſaid action ſo brought againſt him the ſaid Charles on account of the aforeſaid diſcharge of the ſaid J. S. out of cuſtody as aforeſaid; and alſo meaning and inſinuating by the ſaid words ſo ſpoken by the ſaid Samuel as laſt aforeſaid, that the ſaid Charles being conſcious of there being a ground for ſuch action againſt him, had, with a view to defeat or delay the ſame, vexatiouſly and litigiouſly ſued and proſecuted the ſaid E. G. in his majeſty's court of exchequer at Weſtminſter): And afterwards, to wit, on, &c. in a certain other diſcourſe, &c. then and there had with divers other good and worthy ſubjects of this realm, of and concerning the ſaid Charles in his, &c. he the ſaid Samuel then and there, in the preſence and hearing of thoſe ſubjects falſely, &c. theſe other falſe, &c. of and concerning the ſaid Charles in his ſaid, &c that is to ſay, &c. &c. [as in the former Counts to the end]: And afterwards, &c [ſame as the laſt Count, only ſay. "that he took a bribe"]: And afterwards, &c &c. [ſame as laſt Count]: And afterwards, &c. &c. [ſame as laſt Count, only, inſtead of ſaying "he took," ſay I (meaning himſelf the ſaid Samuel) have been informed that Mr. Rompett (meaning the ſaid Charles) took a bribe, &c. &c.]; whereas in truth and in fact the ſaid Samuel, at the time of the ſpeaking and publiſhing of the ſeveral words ſo by him ſpoken as laſt aforeſaid, had not been informed that the ſaid Charles had taken a bribe to let the ſaid J. S. out of priſon as aforeſaid. by reaſon of the ſpeaking and publiſhing of which ſaid ſeveral falſe, &c. he the ſaid Charles was and is very much hurt, injured, and damnified in his aforeſaid good name, &c. and in his aforeſaid buſineſs and reputation, and is brought into public ſcandal and diſgrace amongſt his neighbours and other good and worthy, &c. inſomuch that divers of thoſe neighbours and ſubjects who were uſed and accuſtomed to retain and employ him in his ſaid buſineſs and profeſſion, and to whom the innocence and integrity of the ſaid Charles in the premiſes were unknown, have always, ſince the ſpeaking and publiſhing of the ſaid ſeveral words, and by reaſon thereof, and of their ſuſpicions conſequent upon the

7th Count.

8th Count.

9th Count.

10th Count.

ſame, hitherto declined and deſiſted from employing him in his ſaid buſineſs and profeſſion as they were uſed and accuſtomed to do, and would have done again had not thoſe words been ſpoken; and in particular, the ſaid Charles ſaith, that by reaſon and means of the ſpeaking and publiſhing of the ſaid ſeveral words ſpoken by the ſaid Samuel to the ſaid E. G. as aforeſaid, ſhe the ſaid E. G. did from thenceforth decline to retain and employ him the ſaid Charles to proceed againſt the ſaid J. S at the ſuit of the ſaid E G. as ſuch adminiſtratrix of the ſaid M G. as aforeſaid, for and upon the debt or cauſe of action aforeſaid, whereon he had been ſo ſued by the ſaid M. G. as aforeſaid, as ſhe would otherwiſe have done, and ſhe the ſaid E. G. was alſo induced to bring and did in fact bring the ſaid action or ſuit ſo herein before alledged to have been by her brought againſt the ſaid Charles for and on account of the ſaid J. S. having been ſo diſcharged out of cuſtody as aforeſaid, and the ſaid Charles alſo ſaith, that by reaſon of the ſpeaking and publiſhing of the ſaid ſeveral words hereinbefore mentioned, and particularly of the ſaid words ſo ſpoken by the ſaid Samuel to the ſaid W. P. as aforeſaid, he the ſaid W. P. and alſo one E H I. his daughter, for whom the ſaid Charles had before been concerned in his aforeſaid buſineſs or profeſſion and as a ſolicitor in equity, refuſed any longer to employ him in certain buſineſs, in which he was then employed and concerned, or in any other buſineſs whatſoever; whereby he the ſaid Charles hath been deprived of great gains and profits which would otherwiſe have ariſen to him from the doing and performing of ſuch ſeveral buſineſſes as aforeſaid, and from his being concerned and continuing to be concerned therein, and in other buſineſs of and for the ſaid E. G. W. P. and E. H P. and ſuch other of his clients as ſo left off employing him as aforeſaid, and he the ſaid Charles alſo was and hath been, and is, on occaſion and by reaſon and means of the ſpeaking and publiſhing of the aforeſaid words, and of other the premiſes aforeſaid, otherwiſe greatly injured and damnified, to wit, at, &c. to the damage of the ſaid Charles of five thouſand pounds, and therefore he brings his ſuit, and prays, &c. Pledges, &c.

V. LAWES.

And the ſaid Samuel in his own proper perſon comes and defends the wrong and injury, when, &c. and ſays he is not guilty of the premiſes aforeſaid, above laid to his charge, or any part thereof in manner and form as the ſaid Charles hath above thereof complained againſt him, and of this he puts himſelf upon the country, and the ſaid Charles doth the like, therefore let a jury come before our lord the king at Weſtminſter, on, &c. who are in no way of kin either to the ſaid Samuel or the aforeſaid Charles, to recognize upon their oath the whole truth of the premiſes, becauſe as well the ſaid Samuel as the ſaid Charles have put themſelves upon that jury, the ſame day is given to the parties aforeſaid, at the ſame place.

MID-

MIDDLESEX, to wit. William Loud complains of James Frump, being, &c.; for that whereas the ſaid William now is a good, true, honeſt, juſt, and faithful ſubject of this realm, and as ſuch hath always from the time of his nativity hitherto behaved and governed himſelf, and hath always, until the ſpeaking and publiſhing the ſeveral falſe, ſcandalous, malicious, and defamatory words hereafter mentioned to have been ſpoken and publiſhed by the ſaid James of and concerning the ſaid William, been held, eſteemed, and reputed to be a perſon of good name, fame, credit, character, and reputation, and hath never been guilty, nor until the ſpeaking and publiſhing of the ſeveral falſe, &c. words hereafter mentioned been ſuſpected to have been guilty of any kind of fraud, cheating, or deceit, or of any ſuch crime: And whereas the ſaid William, before and at the ſeveral times of the ſpeaking and publiſhing of the ſeveral falſe, &c. words hereafter mentioned was, and from thence hitherto hath been, and ſtill is a victualler, and the trade and buſineſs of a victualler during all that time hath uſed, exerciſed, followed, and carried on, and ſtill doth uſe, exerciſe, follow, and carry on, in a certain public ale or victualling-houſe of him the ſaid William, commonly called and known by the name or ſign of the Blue Poſts; and whereas the ſaid William hath, during all the time aforeſaid, exerciſed and carried on his ſaid trade and buſineſs with the greateſt fairneſs and integrity, and without at any time mixing, or until the ſpeaking and publiſhing of the ſeveral falſe, &c. words hereafter mentioned, been ſuſpected of mixing the porter or ſtrong beer ſold by him in his ſaid trade with four or other ſmall beer, or other liquor of an inferior or prejudicial nature; and the ſaid William was alſo at the time of the ſpeaking and publiſhing the ſeveral falſe, &c. words hereafter mentioned, daily acquiring ſundry great gains and profits in his aforeſaid buſineſs, to the comfortable ſupport of himſelf and family, and the increaſe of his riches, to wit, at, &c.; yet the ſaid James, well knowing all and ſingular the premiſes aforeſaid, but contriving and maliciouſly intending, wrongfully and unjuſtly to prejudice, degrade, and injure the ſaid William in his aforeſaid good name, &c. and in his buſineſs aforeſaid, and to bring him into public ſcandal, ignominy, and diſgrace among all his neighbours, and all other good and worthy ſubjects of this realm, and to ſubject him to the pains and penalties by the laws of this realm provided againſt perſons mixing ſmall beer and other liquors with porter or ſtrong beer, heretofore, to wit, on, &c. at, &c. in a certain diſcourſe which he the ſaid James then and there had with divers other good and worthy ſubjects of this realm, of and concerning the ſaid William in his aforeſaid buſineſs, he the ſaid James then and there falſely and maliciouſly did ſay, proclaim, and loudly publiſh theſe falſe, &c. words of and concerning the ſaid James in his ſaid buſineſs, in the preſence and hearing of thoſe ſubjects, that is to ſay, "There is Loud at the Blue Poſts (meaning him the ſaid William) buys four ſmall beer and mixes it (meaning ſuch four ſmall beer) with his ſtrong

Declaration in B. R. words ſpoken (who keeps a public houſe) ſcandalous, that he the porter ſold with ſmall beer &c.

(thereby meaning and insinuating that the said William in his aforesaid business fraudulently mixed sour small beer with the strong beer sold by him in his said business, and thereby cheated and defrauded his customers in his said trade and business), and I (meaning himself the said James) can prove it (meaning that the said William so mixed sour small beer with the strong beer sold by him in his said business); and I (meaning himself the said James) can bring the man forward that serves him (meaning the said William) with it," (meaning with such sour small beer as
1st Count. aforesaid): And afterwards, to wit, on, &c. at, &c. in a certain other discourse which he the said James then and there had with divers other good and worthy subjects of this realm of and concerning the said William in his aforesaid business, he the said James then and there falsely, &c. said, &c. these other false, &c. words following, of and concerning the said William in his business aforesaid, in the presence and hearing of those last-mentioned subjects, that is to say, "Loud (meaning him the said William) buys sour small beer and puts it (meaning such sour small beer as last aforesaid) into his porter," (meaning the porter sold by him the said William in his aforesaid business, and also meaning and insinuating by the said words so spoken by the said James as last aforesaid, that the said William in his said business fraudulently mixed sour small beer with the porter sold by him in his said business, and that he thereby cheated and defrauded his customers in
2d Count. his said business) And afterwards, to wit, on, &c. in a certain other discourse, &c. &c. [as before, till you come to the words, which were as follow], "Loud (meaning the said William) buys stale (meaning a certain liquor compoſed of sour small beer and other ingredients) and mixes it (meaning such liquor compoſed of sour small beer and other ingredients as aforesaid) with his porter," (meaning the porter sold by him the said William in his aforesaid business, and also meaning and insinuating by the said words so spoken by the said James as last aforesaid, that the said William in his said business fraudulently mixed sour small beer and other ingredients with the porter sold by him the said William in his said business, and that he thereby cheated and defrauded his customers in his said
4th Count. business): And afterwards, to wit, on, &c. at, &c. [as before to the words, then thus], "There is Loud and one A. B. (meaning one A. B. who also then and there exercised and carried on the said business of a victualler near to him the said William) both buy sour small beer and mix it (meaning such sour small beer as aforesaid) with their porter" (meaning the porter sold, &c. &c. [as before]: And afterwards, to wit, on, &c. in a certain other discourse, &c. [to the words as before, then thus], "Loud (meaning the said William) mixes his porter (meaning the porter sold by him the said William in his aforesaid business) with small beer and sells it for strong (meaning for strong beer); and I (meaning himself the said James) can prove it," (meaning that the said William so mixed the porter sold by him in his said business with small beer, and afterwards sold it for strong beer, and also meaning and in-

sinuating

ſinuating by the ſaid words ſo ſpoken by the ſaid James as laſt aforeſaid, that he the ſaid William was an unfair and a diſhoneſt trader in his aforeſaid buſineſs, and that he cheated and defrauded his cuſtomers therein, by fraudulently mixing the ſaid ſtrong beer ſold by him in his ſaid buſineſs with ſmall beer and with beer of an inferior quality and goodneſs): And afterwards, to wit, on, &c. at, &c. in a certain other diſcourſe, &c. [as before], "He (meaning the ſaid William) buys four ſmall beer, and mixes it (meaning ſuch four ſmall beer) with his porter," (meaning with the porter ſold by him the ſaid William in his aforeſaid buſineſs; and alſo meaning and inſinuating by the ſaid words ſo ſpoken by the ſaid James as laſt aforeſaid, that he the ſaid William in his aforeſaid buſineſs cheated his cuſtomers by mixing the ſtrong beer ſold by him to them with four ſmall beer): by means of the ſpeaking and publiſhing of which ſaid ſeveral falſe, &c. he the ſaid William is very much injured, prejudiced, and damnified in his aforeſaid good name, &c. and in his aforeſaid trade and buſineſs, to wit, at, &c. Damages. Suit. V. LAWES.

Eaſter Term, 28. Geo. III.

LONDON, to wit. Andrew Brownhead complains of Joſeph Yanko; for that whereas the ſaid plaintiff now is a good, true, honeſt, juſt, and faithful ſubject of this realm, and as ſuch hath always, from his nativity hitherto behaved and governed himſelf, and hath never been guilty, nor until the committing of the grievances hereafter mentioned, ſuſpected of being guilty of wilful and corrupt perjury, or of any other ſuch crime or offence: And whereas before the grievance hereafter mentioned, to wit, on the nineteenth of February A. D. 1788, at L. &c. a certain bill of exchange, purporting to be the firſt, the ſecond, and third of the ſame tenor or date being unpaid, for ſeventy-nine pounds, drawn by and under the firm of John Proud and company, bearing date at Annapolis in Maryland, America, the firſt day of November 1787, payable to his excellency William Sourcrout, eſquire, or order at thirty days after ſight, and directed to a certain firm or partnerſhip, in which he the ſaid defendant then, and at the time of the committing of the grievance hereafter mentioned, was concerned as a partner, to wit, a certain partnerſhip then and there exerciſed and carried on by and under the firm of Yanko and Proud was preſented to the ſaid defendant as a partner in the ſaid parnerſhip for acceptance, by W. D. notary public, by a certain then clerk of him ſaid W. D. on account of Meſſrs. Donald and Burton of L. aforeſaid, merchants, the then holders of the ſame bill by fair and *bona fide* means, and not by or through the means of perjury, or any other unlawful means or manner practiſed, or committed by the ſaid plaintiff, on whoſe account the ſaid bill had been, and was before then negociated and indorſed over; yet the ſaid defendant, well knowing the premiſes aforeſaid, did not, nor would then and there accept the ſaid bill of exchange, but contriving

Declaration for words concerning a bill of exchange drawn in Maryland, which defendant was to have accepted; but that he refuſed ſo doing, aſſigning a reaſon in writing, &c. plaintiff, &c. procured through the means of perjury, and that he was then proſecuting the offence.

and maliciouſly intending not only to defame and injure him ſaid plaintiff in his aforeſaid good name, &c. on, &c. at, &c. did refuſe to accept the ſaid bill, and by way of reaſon for his not accepting the ſame, did then and there falſely and maliciouſly cauſe and procure to be delivered by a certain then clerk of them the ſaid defendant to the ſaid clerk of the ſaid W. D. as ſuch notary public as aforeſaid, a certain falſe, ſcandalous, and defamatory paper writing, containing therein as a reaſon for not accepting the ſaid bill of exchange, certain falſe, ſcandalous, and defamatory matter of and concerning the ſaid plaintiff, and of and concerning ſaid bill of exchange, and the aforeſaid negociation of the ſame, to the tenor and effect following, to wit, "The bill ſeventy-nine pounds, dated the firſt of November 1787, payable (meaning payable) to his excellency (meaning his excellency W. S.) (meaning the ſaid bill of exchange ſo preſented to the ſaid defendant for his acceptance as aforeſaid) was obtained from the ſaid W. S. (meaning the ſaid W. S. the payee in the ſaid bill) and J. P. and Co. (meaning the drawers of the ſaid bill) by A. B. (meaning ſaid plaintiff) the plaintiff in this ſuit, through the means of wilful and corrupt perjury, for which A B. (again meaning the ſaid plaintiff) now ſtands preſented in Maryland Crown Court, February the nineteenth 1788" (thereby meaning and intending to have it underſtood and believed that the ſaid plaintiff had been and was guilty of wilful and corrupt perjury, that he was then under proſecution for the ſaid offence, and that the ſaid bill of exchange had been and was obtained by him the ſaid plaintiff by means of perjury): And the ſaid plaintiff in fact further ſaith, that the ſaid defendant further continuing and maliciouſly intending to defame and injure him ſaid plaintiff as aforeſaid, afterwards, to wit, on, &c. did maliciouſly *compoſe, write, and* publiſh, and cauſe to be *compoſed, written*, and published a certain other falſe, ſcandalous, and defamatory matter of and concerning ſaid plaintiff, and of and concerning the ſaid bill of exchange ſo preſented to the ſaid defendant *for acceptance as aforeſaid*, and the negociation of the ſame to the tenor and effect following, to wit, the bill, &c. &c. (as in firſt Count: Same as ſecond Count, only omitting what is in Italic): And the ſaid plaintiff in fact further ſays, that the ſaid defendant further contriving and maliciouſly intending as aforeſaid, afterwards, to wit, on, &c. in a certain other diſcourſe which the ſaid defendant then and there had with divers good, &c. of and concerning ſaid plaintiff, and of and concerning ſaid bill of exchange hereinbefore mentioned, and the aforeſaid negociation of the ſame, he the ſaid defendant then and there, in the preſence and hearing of thoſe ſubjects, falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed theſe ſcandalous, malicious, and defamatory words following of and concerning ſaid plaintiff, and of and concerning the ſaid bill of exchange and the negociation of the ſame, that is to ſay, "The bill for ſeventy-nine pounds, dated the firſt of November 1787, payable to his excellency W. S. (meaning, &c.) was obtained from W. S. (meaning, &c. and J. P. and Co. (meaning, &c.) by A. B. (meaning, &c.) through the

Count.

Ditto.

the means of wilful and corrupt perjury, for which A. B. (again meaning, &c) now ſtands preſented in Maryland" (thereby meaning, &c. Inuendoes as in firſt Count. Colloquium ſame as laſt. Words. "It (meaning the ſaid bill of exchange ſo preſented to ſaid defendant as drawee as aforeſaid) was obtained by A. B. (meaning, &c) through the means of wilful and corrupt perjury, for which he (again meaning, &c) ſtands preſented in Maryland" (thereby meaning that ſaid plaintiff had been and was guilty of perjury). Colloquium as laſt. Words: "He obtained it by perjury" (with proper inuendoes); by means of which ſaid ſeveral grievances committed by the ſaid defendant as aforeſaid, he the ſaid plaintiff was and is greatly hurt and injured in his aforeſaid good name, &c. and is reputed and ſuſpected amongſt divers good, &c. to have been and to be guilty of the crime of wilful and corrupt perjury, and to have obtained the aforeſaid bill of exchange by means of perjury, and by reaſon of the ſaid bill of exchange having been ſo refuſed acceptance as aforeſaid by the ſaid defendant, on preſenting the ſame for acceptance as aforeſaid, the ſaid bill was afterwards to wit, on, &c. returned by the ſaid W. D. with a certain proteſt of him the ſaid W D as ſuch notary public as aforeſaid accompanying the ſame, certifying and containing therein a copy of the ſaid paper writing ſo delivered by the ſame defendant on the ſame being ſo preſented for acceptance as aforeſaid, whereby the purport and contents of the ſaid paper writing became and were, and have been and are divulged and made public, and in conſequence thereof the credit of the ſaid plaintiff hath been and is conſiderably injured and damnified, to wit, at, &c. to the damage of, &c.

5th Count.

6th Count. Concluſion.

Eaſter Term, 28. Geo III.

MIDDLESEX, to wit. William Cork complains of Richard Fraud, for that whereas the ſaid William C now is, &c. and as ſuch, &c and during all that time of the ſpeaking, &c of, &c. hath been ever held, reputed, and eſteemed, taken, and looked upon to be a perſon of good name, &c. and to be a honeſt, fair, juſt and upright man in all his dealings and concerns, and never in all his lifetime hitherto, nor until, and was at any time ſuſpected to be guilty of any kind of theft, larceny, felony, trickery, deceit, or falſehood, or of buying or receiving ſtolen goods, knowing them to be ſtolen, or of any diſhoneſty or fraud whatſoever, but hath ever lived and continued free, clear, and innocent, and wholly unſuſpected of and from all and all manner of ſuch deteſtable and abominable crimes. And whereas the ſaid W. C. long before and at the time of, &c. hath been and ſtill is a barge builder and barge maſter, to wit, at, &c and in the exerciſe of his ſaid buſineſs hath during all the time aforeſaid behaved and conducted himſelf with great juſtice, fairneſs, integrity, honeſty, and uprightneſs, and the ſaid W. C. ſo being ſuch barge maſter and barge builder as aforeſaid, he the ſaid W. C. long before and at the time of, &c. was employed by divers good and worthy ſub-

Declaration, words ſpoken, plaintiff, ating his purchaſed goods, knowing to be good, plaintiff's compli having ther with

jects of our lord the king in the way of his ſaid trade and buſineſs, and particularly was retained and employed by one S. W. as well in and about the affairs, matters, buſineſſes, and perſons trading and uſing commerce, under the name, ſtile, and firm of the Albion Mill Company, to whom the ſaid S. W. then was and ſtill is agent and ſervant, as in other affairs, matters, and buſineſſes of and for the ſaid S. W. and alſo by J. A. &c. &c. &c. as well in the way of the ſaid trade and buſineſſes of the ſaid W. C. as otherwiſe, by reaſon of which ſaid premiſes, and of the ſaid retainers, employers of the ſaid S. W. J. A. &c. &c. &c. he the ſaid W. C. had from time to time, during the time that he was ſo retained and employed as aforeſaid, got, procured, and obtained to himſelf great gains, profits, and emoluments in the way of his ſaid trade, buſineſſes, and otherwiſe, during all the time aforeſaid that he was ſo retained and employed as aforeſaid, he the ſaid W. C. behaved and conducted himſelf with the utmoſt fidelity, honeſty, and integrity in all his dealings and concerns, as well with and towards the ſaid S. W. J. A. &c. &c. as towards all others by whom he was ſo retained and employed as aforeſaid, by reaſon whereof he the ſaid W. C. before, &c. had deſervedly got and obtained to himſelf the benevolence, good opinion, and credit as well of the ſaid S. W. J. A. &c. &c. &c. of the ſaid perſons by whom he was ſo retained and employed, as of all other perſons any ways acquainted with him the ſaid W. C. and had raiſed and acquired great buſineſs in the way of his trade, and yearly gained and procured divers large ſums of money, to the comfortable ſupport of himſelf and his family, and to the great increaſe of his ſubſtance; yet the ſaid R. F. well knowing the premiſes, but greatly envying the happy ſtate and condition of the ſaid W. C. and contriving, &c. to hurt, &c. the ſaid W. C. in his good name, and as well in his aforeſaid buſineſs as otherwiſe, and thereby not only to bring him into public ſcandal amongſt all his neighbours and acquaintance, and other good, &c. and alſo wrongfully and injuriouſly to ſubject him to the puniſhment, pains, and penalties made and provided againſt thieves and felons, and againſt buyers or receivers of ſtolen goods, knowing them to be ſtolen, but alſo to bring him into diſcredit and diſgrace with the ſaid S. W. J. A. &c. &c. and all others by whom the ſaid W. C. was ſo retained and employed in the way of his ſaid buſineſs and otherwiſe as above-mentioned, and to cauſe the ſaid S. W. J. A. &c. and all his cuſtomers and employers in his ſaid buſineſs and otherwiſe, to leave and deſert him, and to deſiſt from employing him in his aforeſaid buſineſs, or to have any manner of dealings or concerns with him, and thereby to impoveriſh and ruin the ſaid W. C. heretofore, to wit, on, &c. at, &c. in a certain diſcourſe, &c. [here go on with the words and proper inuendoes for ſeveral Counts]; by reaſon of the ſpeaking, &c. of which, &c. the ſaid W. C. is not only very much injured, degraded, and damnified in his good name, &c. and is alſo fallen into public ſcandal, &c. amongſt all his friends, neighbours, and acquaintances, and other faithful and worthy ſubjects of this realm, but alſo very many of

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thoſe friends and neighbours, and other faithful ſubjects of this kingdom, and particularly the ſaid S. W. J. A. to whom the innocence and integrity of the ſaid W. C. in the premiſes were unknown, have always from the time of, &c. ſo vehemently ſuſpected the ſaid W. C. to have been guilty of felony, and of buying and receiving ſtolen goods, knowing them to be ſtolen, that the ſaid S. W. J. A. &c. and many others of his ſaid cuſtomers and employers on the occaſion always from thence afterwards hitherto have declined from keeping him company, or have any manner of converſation with him, or have any dealings or concerns with him in the way of his ſaid trade and buſineſs or otherwiſe, as before they were uſed and accuſtomed to have, and do ſtill daily more and more withdraw themſelves from his company, converſation, and dealing with him in the way of his trade, to wit, at, &c.

V. LAWES.

2. LIBEL.

Bill against attorney for famation plaintiff by adverſ

LONDON, to wit. W. P. and T. H. complain of T. L. gentleman, one of the attornies of the court of our lord the king himſelf preſent here in court in his proper perſon; for that whereas they ſaid plaintiffs, before and on the twelfth day of Auguſt A. D. 1775, were ſeiſed in their demeſne as of fee of and in two undivided third parts of a certain manor, with the appurtenances, called Great Birch, in the county of Eſſex, and alſo of two undivided third parts of a certain farm lying within the ſaid manor, and containing, beſides the buildings, a great quantity of land, to wit, two hundred acres of land, and which ſaid two undivided third parts of the ſaid farm, at the time of the committing the grievance hereafter mentioned, were in the occupation of one Joſeph Skipper, as a tenant thereof to the ſaid W. and T. and being ſo ſeiſed, they the ſaid W. and T. wiſhed and intended to ſell, and were deſirous of parting with the ſaid two undivided third parts of the ſaid manor, with the appurtenances, and of the ſaid farm, for a valuable conſideration of the ſaid W. and T. had for that purpoſe, before the ſaid twelfth day of Auguſt, in ſaid A. D. 1775, advertiſed and publiſhed ſuch their intention and deſire in divers public newſpapers, nevertheleſs the ſaid defendant, well knowing the premiſes, but contriving and maliciouſly intending to bring the title of the ſaid plaintiffs to the ſaid two undivided third parts of the ſaid manor, with the appurtenances, and of the ſaid farm, into diſpute, and to prevent them the ſaid plaintiffs in their deſire to ſell the ſame, he the ſaid defendant did, on the ſaid twelfth day of Auguſt in ſaid A. D. 1775, at L. aforeſaid, falſely and maliciouſly print and publiſh, and cauſed to be printed and publiſhed in a certain newſpaper commonly called and known by The London Evening Poſt, the falſe and malicious advertiſement following, that

is to ſay, Whereas an advertiſement (meaning an advertiſement made by ſaid plaintiffs) hath lately appeared in the public papers, giving notice, that the manor of Great Birch, with the courts, quit rents, perquiſites, and profits, (meaning the ſaid manor, with the appurtenances, of two undivided third parts of which the ſaid plaintiffs were then and are ſtill ſeiſed as aforeſaid) and alſo a farm in the occupation of J. S. ſituate in the pariſh of G. B. in the county of Eſſex, (meaning the ſaid farm of two undivided third parts of which the ſaid plaintiffs were then and are ſtill ſeiſed as aforeſaid), are to be ſold, and that an enquiry was to be made of Mr. Maykins at Colcheſter, and Mr. P. at No. 37. Bunhill-row, the public is therefore requeſted to take notice, in order to prevent any impoſition on a purchaſor, that the ſaid manor, farm, and premiſes (meaning ſaid manor, with the appurtenances, and the ſaid farm of two undivided third parts of which the ſaid plaintiffs were and are ſo ſeiſed as aforeſaid) were ſettled upon Mrs. W. widow of Richard W. W. eſquire, deceaſed, as her jointure, and the ſaid R. W. W. being ſeiſed thereof (again meaning ſaid manor, with the appurtenances, and the ſaid farm of two, &c. as before) in fee, deviſed the ſame (again meaning ſaid manor, &c.) by his will to the ſaid Mrs. W. his wife, and her heirs for ever; thereby meaning and falſely inſinuating that ſaid plaintiffs had no right, title, or intereſt in the ſaid manor, with the appurtenances, and the ſaid farm, or either of them, or in any part of them, or either of them, whereas in truth and in fact the ſaid manor, with the appurtenances, and the ſaid farm, or either of them, in fee; and whereas in truth and in fact the ſaid R. W. W. was not ſeiſed of the ſaid manor, with the appurtenances, and of the ſaid farm, or either of them, in fee; and whereas in truth and in fact the ſaid R. W. W. did not deviſe the ſaid manor, with the appurtenances, and the ſaid farm, or either of them, to the ſaid Mrs. W. his wife, and to her heirs for ever; and whereas in truth and in fact they the ſaid plaintiffs, at the time of the publiſhing of ſaid falſe, &c. advertiſement as aforeſaid, were ſeiſed of two undivided third parts of ſaid manor, with the appurtenances, and of the ſaid farm in their demeſne as of fee as aforeſaid; by reaſon and means of the publiſhing of which ſaid falſe advertiſement as aforeſaid, the title of ſaid plaintiff in and to the ſaid two undivided third parts of the ſaid manor, with the appurtenances, and of the ſaid farm, is brought into great diſrepute, and many perſons who were willing to treat and deal, and would have otherwiſe treated and dealt with the ſaid plaintiffs for the purchaſe of the ſaid two undivided third parts of the ſaid manor, with the appurtenances, and of the ſaid term, have been deterred from doing the ſame, and have wholly deſiſted therefrom, and the ſaid plaintiffs have been totally prevented in their deſire to ſell and diſpoſe of the ſaid two undivided third parts of the ſaid manor, with the appurtenances, and of the ſaid farm, for a valuable conſideration, neither have they ſold the ſame, or either of them, or any part thereof: And whereas, &c. [a 2d Count as firſt, only ſaying that ſaid plaintiffs had, before the

twelfth

twelfth of Auguſt in ſaid A. D. 1779, communicated ſuch their deſire and intention to divers people; nevertheleſs, &c. maliciouſly print and publiſh, and cauſe to be printed and publiſhed a certain other falſe and malicious advertiſement in a certain other newſpaper called The London Evening Poſt, by which ſaid laſt-mentioned advertiſement he ſaid defendant did falſely aſſert, publiſh, and declare that the ſaid manor, farm, and premiſes (meaning, &c.) were ſettled, &c. [every thing elſe as in firſt Count]. Damages two thouſand pounds. Suit, &c. Pledges, &c.

LONDON, to wit S. W. complains of J C. being in the cuſtody, &c., for that whereas, &c. [go on as in the inducement to declaration for words of inſolvency, &c., yet ſaid defendant, well knowing the premiſes, but greatly envying the happy ſtate and condition of the ſaid Samuel, and contriving and maliciouſly intending to hurt, degrade, damnify, and injure him the ſaid Samuel in his good name, fame, credit, and reputation in his aforeſaid buſineſs, and to cauſe him to be eſteemed and reputed to be a man worthy of no credit, and alſo to prejudice, hurt, injure, and damnify ſaid plaintiff with one Mark Huiſh, a ſtocking weaver at Nottingham, who, for a long time had dealt with, and did then deal with ſaid plaintiff in the way of his trade, and to induce and procure the ſaid Mark Huiſh to ceaſe and leave off dealing with the ſaid plaintiff for the future, on the ſixth day of July A. D. 1756, at London, &c. aforeſaid, to wit, in the pariſh of Maryle bow, in the ward of Cheap, did falſely, maliciouſly, and ſcandalouſly write and publiſh, and cauſe and procure to be wrote and publiſhed a certain ſcandalous and malicious libel of and concerning ſaid plaintiff in his aforeſaid trade and buſineſs, in the form and manner of a letter directed to ſaid Mark Huiſh, by the name and deſcription of Mr. John Hughes, ſtocking weaver, at Nottingham, dated the ſixth day of the month (meaning thereby the ſixth day of July aforeſaid) containing therein this falſe, ſcandalous, libellous, defamatory, and opprobrious matter following of and concerning ſaid plaintiff in his aforeſaid buſineſs: "Sir, you (meaning ſaid Mark Huiſh) will be ſurprized to ſee a ſtranger write to you (meaning ſaid M H.), but as I (meaning himſelf ſaid defendant) have no other *view* but doing as I (again meaning himſelf ſaid defendant) would be done by, therefore as I (again meaning himſelf defendant) believe you (again meaning ſaid M. H.) are a fair trader, therefore cannot ſee you (meaning ſaid M. H.) in ſuch hands (meaning ſaid plaintiff's hands) without letting you (again meaning ſaid M. H.) know it, for I (again meaning himſelf ſaid defendant) am told you (again meaning ſaid M. H.) have large dealings with one S. Warpur (meaning ſaid plaintiff) in Philpot-lane, London (meaning Philpot-Lane, London, where ſaid plaintiff then lived, dwelt, reſided, and carried on his ſaid trade and buſineſs), and he (meaning ſaid plaintiff) was a bank-

Declaration for libel by inſolvent plaintiff.

bankrupt ſome years before the writing and publiſhing of the ſaid libel) and never could get his (meaning ſaid plaintiff) certificate, for all that he (again meaning ſaid plaintiff) has or deals for is his (meaning ſaid plaintiff) former creditor's right, and he (meaning ſaid plaintiff) has not been in buſineſs above three quarters (meaning three quarters) of a year, and now is joined with his (meaning ſaid plaintiff's) brother (meaning one George Warpur) and J. Mounter (meaning one John Mounter), and they (meaning ſaid plaintiff, George Wilſon, and J. Mounter) get all the credit they (meaning ſaid, &c.) can, by one (meaning one of the three laſt mentioned perſons) recommending another, (meaning another of thoſe three laſt-mentioned perſons) and they (meaning, &c) are arreſted every day, &c to bail one another, and pay nobody, ſo now I (meaning himſelf ſaid defendant) have done my (meaning his ſaid defendant's) part, and if you (meaning ſaid M. H.) are not the man it (meaning that letter or libel) was deſigned for, pray burn it (meaning ſaid letter or libel), and if you (meaning ſaid M H) take the hint burn it, (meaning ſaid letter or libel) for the writer of ſaid letter or libel is neither to get nor loſe by it, ſo farewell " And ſaid defendant, on ſame day and year aforeſaid, at London, &c. aforeſaid, wrongfully, falſely, and maliciouſly ſent, and cauſed to be ſent the ſaid libel in the form and manner of a letter, unto the ſaid M. H. to his houſe at Nottingham aforeſaid, and the ſame was, by means of ſuch ſending thereof, received, opened, and read by the ſaid M. H. as thereby publiſhed by ſaid defendant to ſaid M. H, by reaſon and means of the writing and publiſhing of which ſaid falſe, fictitious, ſcandalous libel, and libellous matters, ſaid plaintiff is not only much hurt and prejudiced in his good name, fame, credit, and eſteem in his aforeſaid buſineſs, but alſo is fallen into great diffidence and diſcredit amongſt his creditors and other worthy ſubjects of this realm with whom he had dealt and traded in his aforeſaid buſineſs, and of whom he the ſaid plaintiff was accuſtomed to buy ſundry goods and merchandizes in his aforeſaid buſineſs on credit, without ready money, and eſpecially the ſaid M H inſomuch that thoſe creditors and other ſubjects of this realm, and eſpecially the ſaid M. H. on occaſion of the writing and publiſhing the ſaid libel, have altogether refuſed, and ſtill do refuſe to buy or ſell, or have any thing to do with plaintiff in his aforeſaid buſineſs.

Drawn by MR. WARREN.

LONDON, to wit. W S and J H. complain of J. M; for that whereas they the ſaid plaintiffs now are, and have always hitherto been good and honeſt ſubjects of this realm, and of good

merchants, accuſing them of ſelling coals ſhort of meaſure, and that they took a ſack quantity that had been landed at the plaintiff's wharf, in order to their being carted place, and that on an action being brought, and a complaint being made to a juſt ce for the offences, they endeavoured to compromiſe the ſame.

name,

name, fame, credit, and reputation: And whereas they the ſaid plaintiffs long before, and at the ſaid ſeveral and reſpective times of the compoſing, writing, printing, and publiſhing of the ſeveral falſe, ſcandalous, and malicious libels hereinafter mentioned and ſet forth, exerciſed, and carried on the trade and buſineſs of coal merchants in partnerſhip together in a great and extenſive way, at a certain wharf of them the ſaid plaintiffs, ſituate at a certain place called Puddle Dock, in London aforeſaid, and during all that time exerciſed and carried on their ſaid trade and buſineſs with the greateſt honeſty, fairneſs, and integrity, always giving and delivering to their reſpective cuſtomers their full, due, and proper quantity and meaſure of coals by them reſpectively bought and agreed for, without being guilty, or ſuſpected of being guilty of any the leaſt fraud or diſhoneſty towards their ſaid cuſtomers, or any or either of them: And whereas before and at the ſeveral reſpective times of the compoſing, writing, printing, and publiſhing of the ſeveral falſe, ſcandalous, and malicious libels hereafter mentioned, they the ſaid plaintiffs were uſed and accuſtomed to land, wharf, and cart coals for other perſons at and from their ſaid wharf, for wharfage, cartage, and reward to them the ſaid plaintiffs on that occaſion, and always during all that time ſent away and delivered from their ſaid wharf the whole of ſuch coals ſo landed and wharfed thereat, for ſuch other perſons as aforeſaid, without at any time embezzling, retaining, or keeping to their own uſe any part of ſuch coals And whereas before the compoſing, &c. of the falſe, &c. libel hereafter next mentioned, a certain parcel or quantity of coals had been and were bought of them the ſaid plaintiffs in the courſe of their ſaid trade and buſineſs of coal merchants, and had been and were afterwards delivered to and for one J. D. and one J. B. at a certain place called the Bridge Yard, in the borough of S. in the county of S. and a certain other parcel or quantity of coals had been and were ſold by one H. S to one J. C. and ſuch laſt mentioned coals had been and were landed and wharfed by him the ſaid H S. at the wharf of the ſaid plaintiffs, to be by them carted from thence for him the ſaid H S to the ſaid J. C. the aforeſaid buyer or purchaſer thereof, and ſuch coals were afterwards, accordingly carted from the ſaid wharf of them the ſaid plaintiffs, and the ſaid W. S. (one of the plaintiffs) was preſent at ſuch carting thereof, and no fraud whatſoever was then and there committed or attempted to be committed or practiſed by them the ſaid plaintiffs, or by either of them, or by any or either of their ſervants, with reſpect to ſuch coals, and the ſaid coals ſo delivered to and for the ſaid J. D. and J B. as aforeſaid, had been and were duly and juſtly meaſured and delivered by them the ſaid plaintiffs according to the terms of the ſale thereof, but notwithſtanding ſuch premiſes, a certain action or ſuit had been and was, before the compoſing, &c. of the falſe, &c. libel hereafter mentioned, unjuſtly brought againſt them the ſaid plaintiffs in the court of our lord the king, before the king himſelf, for the recovery of a certain penalty alledged to have been incurred by them the ſaid plaintiffs, for not

juſtly,

juſtly, and without fraud, delivering the ſaid coals ſo delivered to the ſaid J. D. and J. B. as aforeſaid, by and according to ſuch meaſure and quantity as the ſame were alledged to have been ſold by, but only a much leſs quantity, and a certain complaint had alſo been made by the ſaid J. C. to and before N. N. eſquire, as one of the juſtices of the peace of our lord the now king in and for the ſaid city of L. againſt a certain then ſervant of them the ſaid plaintiffs, for taking away a certain part, to wit, one ſack of the ſaid coals ſo landed and wharfed at the ſaid wharf of them the ſaid plaintiffs for the ſaid J. H. as aforeſaid, and ſo by him ſold to the ſaid J. C. as aforeſaid, and the ſaid action or ſuit ſo brought againſt them the ſaid plaintiff as aforeſaid, was at the time of the compoſing, &c. of the falſe, &c libel hereafter next mentioned and ſet forth, depending and undetermined, and the ſaid plaintiff had by no means compromiſed or offered to compromiſe the ſame, but on the contrary intended to defend, and were then defending the ſame not only with a view to their acquittal of the premiſes charged upon them in the ſame, but to vindicate their characters to the public, and to evince ſuch actions being wholly groundleſs and without foundation, to wit, at, &c.; yet ſaid defendant contriving and maliciouſly intending wrongfully and injuriouſly to defame the ſaid plaintiffs, and to injure and damnify them in their ſaid trade and buſineſs of coal merchants, and alſo in their ſaid buſineſs of wharfing and carting coals for others, and in their credit and reputation therein, and to cauſe it to be believed and ſuſpected that they were diſhoneſt and unfair traders in their ſaid trade and buſineſs, and that there was a ground and foundation for the ſaid action ſo brought againſt them as aforeſaid, and that they had been guilty of the fraud thereby imputed to them, and alſo that they had attempted and endeavoured to be guilty of frauds as to the ſaid coals ſo ſold to the ſaid J. C. as aforeſaid, and ſo wharfed at and carted from their ſaid wharf as aforeſaid, † he the ſaid defendant heretofore, to wit, on, &c. at, &c. did falſely, &c. *compoſe, &c.* and cauſe and procured to be *compoſed, &c.* (1) in a certain common and public newſpaper of that day called the General Advertiſer, a certain falſe, &c. libel of and concerning ſaid plaintiffs in their ſaid trade and buſineſs, *and of and concerning ſaid action ſo brought againſt them as aforeſaid, and the grounds or pretended cauſe thereof, and alſo of and concerning the ſaid complaint ſo made againſt ſuch ſervant of the ſaid plaintiffs as aforeſaid*, containing therein the falſe, &c. matter following of and concerning them the ſaid plaintiffs in their ſaid trade and buſineſs (2), *and of and concerning ſuch other circumſtances as aforeſaid*, that is to ſay, [here ſet out the libel with proper inuendoes verbatim, as the ſmalleſt variance would be fatal. The purport of the libel was that the plaintiffs had ſold to J. D. and J. B. coals ſhort of meaſure, and that they had ordered their ſervant to take a ſack out of the coals ſold by H. S. to J. C. and that they had endeavoured to compromiſe the action and complaint that had been brought and made againſt them]: And whereas the ſaid plaintiffs in fact further

ſay,

ſay, that the ſaid defendant further contriving, &c. to defame them the ſaid plaintiffs, and to injure and damnify them in their aforeſaid trade and buſineſs, and in their credit and reputation therein, and to cauſe it to be believed and ſuſpected that they were diſhoneſt and unfair traders in their ſaid trade and buſineſs, he the ſaid defendant heretofore, to wit, on, &c. &c. [finiſh this Count from this mark ‡ ſame as the firſt, only omitting what is in Italic, and inſerting what is in margin:] there was alſo ſome ſmall alteration in the inuendoes of the libel: And whereas the ſaid plaintiffs 3d Count. being ſuch coal merchants as aforeſaid, and ſo exerciſing, &c. in partnerſhip together as aforeſaid, they the ſaid plaintiffs, before the compoſing, &c. libel hereafter next mentioned, had, in the courſe of their ſaid trade and buſineſs, ſold a certain other parcel or quantity of coals which were delivered to and for the ſaid J. D. and J. B. at the ſaid houſe called the Bridge Houſe hereinbefore mentioned, and on that occaſion they the ſaid plaintiffs behaved with the greateſt honeſty and fairneſs, and delivered the full and whole quantity of coals ſo bought of them as laſt aforeſaid, to wit, at, &c.; yet the ſaid defendant further contriving ‡, &c. the ſaid plaintiffs in their ſaid trade and buſineſs of coal merchants ſo by them carried on in partnerſhip together as aforeſaid, and in their credit and reputation therein, he the ſaid defendant heretofore, to wit, on, &c. at, &c. did falſely, &c. compoſe, &c. and cauſe and procure to be publiſhed a certain other falſe, &c. libel of and concerning the ſaid plaintiffs in their ſaid trade and buſineſs of coal merchants ſo by them carried on in partnerſhip together as aforeſaid, containing therein certain falſe, malicious, and libellous matter of and concerning them the ſaid plaintiffs in their ſaid trade and buſineſs of coal merchants ſo by them carried on in partnerſhip together as aforeſaid, to the tenor and effect following, that is to ſay [here ſet out that part of the libel relating to the coals ſold to J. D. and J. B. being ſhort of meaſure:] And the plaintiff in fact further ſaith, that 4th Count. the ſaid defendant further contriving, &c. &c. [Same as laſt Count from this mark ‡, only the libel was ſet out more general, and then conclude thus], by reaſon and means of the compoſing, writing, &c. of which ſaid ſeveral falſe, &c. libels and libellous matter hereinbefore mentioned and ſet forth of and concerning the ſaid plaintiffs, they the ſaid plaintiffs were, have been, and are greatly prejudiced and injured in their ſaid trade and buſineſs ſo by them carried on and exerciſed in partnerſhip together as aforeſaid, and in their credit, character, and reputation therein, to wit, at, &c. Damages five thouſand pounds. V. LAWES.

1ſt, Not Guilty of the premiſes: And for further plea in this behalf as to the firſt, ſecond, and third Counts of the ſaid declaration, the ſaid defendant, by leave of, &c. *actio non*; becauſe he ſays, that at the time of the compoſing, writing, and publiſhing, and cauſing and procuring to be compoſed, &c. the ſaid ſuppoſed libel in the ſaid firſt Count of the ſaid declaration mentioned, and at the time of the publiſhing, and cauſing and procuring to be publiſhed

the

the ſaid ſuppoſed libel in the ſecond Count of the ſaid declaration mentioned, and alſo at the time of the compoſing, writing, and publiſhing, and cauſing and procuring to be publiſhed the ſaid ſuppoſed libel in the third Count of the ſaid declaration mentioned [it was exceeding difficult, &c. &c. &c.] And the ſaid defendant further ſays, that at the ſeveral times in the ſaid firſt, ſecond, and third Counts of the ſaid declaration mentioned [it muſt have been allowed that to conceal a fraud, &c. as in the libel to the end]; then ſay, for which reaſons he the ſaid defendant, at the times in the ſaid firſt Count of the ſaid declaration mentioned, did compoſe, &c. and did cauſe, &c. the ſaid ſuppoſed libel in the ſaid firſt Count of the ſaid declaration mentioned, and at the ſaid time when, &c. in the ſecond Count of, &c &c. and alſo at the ſaid time when, &c. in the third Count of the ſaid declaration mentioned, did compoſe, &c. &c. as he lawfully might for the cauſes aforeſaid, and this, &c. wherefore, &c. if, &c.: And for further plea in this behalf, as to the laſt Count of the ſaid declaration, the ſaid defendant, by like leave, &c *actio non*, becauſe he ſaith, that at the time of the compoſing, &c. and cauſing, &c. the ſaid ſuppoſed libel in the ſaid laſt Count of the ſaid declaration mentioned, and thereby ſuppoſed to have been compoſed, &c. and cauſed, &c. by him the ſaid defendant as aforeſaid, they the ſaid plaintiffs had before then ſold and delivered to one J. D and J B a certain quantity or parcel of coals as and for ten chaldron of coals pool meaſure, to wit, at, &c: And the ſaid defendant further ſays, that upon remeaſurement of ſuch coals, the ſame proved to be no more than nine chaldrons and a quarter, or a deficiency of forty five buſhels, to wit, at, &c. for which reaſon he the ſaid defendant, at the ſaid time in the laſt Count of the ſaid declaration mentioned, did compoſe, &c. and cauſe, &c. the ſaid ſuppoſed libel in the laſt Count of the ſaid declaration mentioned, as he lawfully might for the cauſe aforeſaid, to wit, at, &c.; and this, &c.; wherefore, &c. if, &c.

W. BOLTON.

Replication thereto, *de injuria ſua, &c.* and the method thereof.

And the ſaid plaintiffs, as to the ſaid plea of the ſaid defendant by him ſecondly above pleaded in bar, as to the firſt, ſecond, and third Counts of the ſaid declaration, ſay, that they the ſaid plaintiffs ought not to be barred from having and maintaining their aforeſaid action thereof againſt him; becauſe they ſay, that the ſaid defendant, of his own wrong, and without any ſuch cauſe or reaſon as is and are by him above in his ſaid ſecond plea in that behalf alledged, did, at the ſaid time when, &c. in the ſaid firſt Count of the ſaid declaration mentioned, compoſe, &c. and cauſe, &c. the ſaid libel in the ſaid firſt Count of the ſaid declaration mentioned, and at the ſaid time when, &c. in the ſaid ſecond Count of the ſaid declaration mentioned, did publiſh and cauſe, &c. the ſaid libel in the ſaid ſecond Count of the ſaid declaration mentioned, and at the ſaid time when, &c in the ſaid third Count of the ſaid declaration mentioned, did compoſe, &c. the ſaid libel in the ſaid third Count of the ſaid declaration mentioned, to wit, at, &c. in manner

manner and form as the ſaid plaintiffs have above thereof complained againſt him, and this they pray may be enquired of by the country, and the ſaid defendant doth the like, &c.: And as to the ſaid plea of the ſaid defendant by him thirdly, &c. *precludi non*; becauſe they ſay, that the ſaid defendant, at the ſaid time when, &c. in the ſaid laſt Count of the ſaid declaration mentioned, to wit, at, &c. of his own wrong, and without any ſuch cauſe or reaſon as is by him in his ſaid third plea in that behalf alledged, did compoſe, &c. and cauſe, &c. the ſaid libel in the ſaid laſt Count of the ſaid declaration mentioned, in manner and form, &c.; and this, &c. therefore as well, &c. V. LAWES.

Declaration on a libel againſt one of the lords of the admiralty and privy counſellor in Ireland, importing that by plaintiff's conduct he had diſpleaſed the king, againſt the Morning Poſt.

MIDDLESEX, to wit. The right honourable Auguſtus John Hervey complains of William Griffin being, &c. &c; for that whereas he the ſaid Auguſtus now is a good, true, honeſt, juſt, and faithful ſubject of this realm, and as ſuch hath always from his nativity hitherto behaved and governed himſelf, and has for all the time aforeſaid been held and reputed to be a man of good name, fame, and credit, and during all the time aforeſaid hath been and ſtill is a ſingle and unmarried man, to wit, at Weſtminſter, in the county of Middleſex aforeſaid: And whereas the ſaid Auguſtus, before and at the time of the printing and publiſhing of the ſeveral falſe, ſcandalous, malicious, and infamous libels hereafter mentioned, was, and from thence hitherto hath been, and ſtill is one of the grooms or gentlemen of the bed-chamber of and to our ſovereign lord the now king, and alſo one of the commiſſioners for executing the office of high admiral of Great Britain, and alſo one of the privy counſellors of our ſaid ſovereign lord the now king for his kingdom of Ireland, to wit, at W. aforeſaid; by means whereof the ſaid Auguſtus, before the printing and publiſhing of the ſaid ſeveral falſe, ſcandalous, infamous, and malicious libels hereafter mentioned, had deſervedly gained the good opinion as well of our ſovereign lord the now king as of divers good and worthy ſubjects of this realm, to wit, at Weſtminſter aforeſaid, yet the ſaid William, well knowing all and ſingular the premiſes aforeſaid, but contriving and maliciouſly intending wrongly and unjuſtly to injure the ſaid Auguſtus in his aforeſaid good name, fame, and credit, and to bring him into public ſcandal, contempt, ignominy, and diſgrace, and to cauſe it to be credited and believed, that our ſaid ſovereign lord the now king had diſmiſſed and diſcharged the ſaid Auguſtus from the aforeſaid office which he ſo held and enjoyed from and under our ſaid lord the king as aforeſaid, on the fifth of December A. D. 1774, to wit, at Weſtminſter aforeſaid, did falſely and maliciouſly, wilfully and deſignedly print and publiſh, and falſely and maliciouſly, wilfully and deſignedly cauſe to be printed and publiſhed in a certain common public newſpaper, commonly called the Morning Poſt and Daily Advertiſer, a certain falſe, ſcandalous, infamous, and malicious libel of and concerning the ſaid Auguſtus, containing therein the falſe, ſcandalous, infamous, and malicious matter following of and con-

cerning the ſaid Auguſtus, that is to ſay, "The very celebrated double married dutcheſs (meaning a certain perſon commonly called the dutcheſs of Kingſtan) who has long been the ſubject of converſation in this kingdom (meaning the kingdom of England, and now the admired Engliſh reſident of Rome), is likely to be ſtripped of every thing that can adminiſter to her vanity, or the ſupport of her extravagance. We find it is now fully proved that ſhe was abſolutely illegally eſpouſed to the late deceaſed duke (meaning the duke of K. now deceaſed) for eleven thouſand pounds, and that the authenticity of her former marriage has been proved beyond the probability of a doubt. His majeſty (meaning our preſent ſovereign lord the now king), looking upon the principal inſtrument (meaning the ſaid Auguſtus) of this infamous tranſaction with abhorrence, has, to his (meaning our ſovereign lord the king) infinite honour, informed this worſhipful man (meaning the ſaid Auguſtus) in perſon, that he (meaning the ſaid Auguſtus) in conſequence of which the honourable gentleman (meaning the ſaid Auguſtus) turned upon his (meaning the ſaid Auguſtus's) heel, and [A 21 Car. 2. c. 7. ſ. 1.] without the inducement, ſaying, that the ſame ſhould be printed and publiſhed, 3d Count to ſecond, that he publiſhed only, 4th Count, that he cauſed to be publiſhed. C. RUNNINGTON.

Upon the trial plaintiff recovered againſt defendant two hundred pounds damages.

For publiſhing a libel againſt the plaintiff a clergyman, whereby he was diſturbed in the exerciſe of his cure.

HERTFORDSHIRE, to wit. Thomas Mouſe, late of, &c. and Richard Louſe, late of, &c. were attached to anſwer unto Rees Pounce, &c., for that whereas the ſaid Rees now is a good, true, honeſt, and worthy ſubject of this realm, and as ſuch hath always behaved himſelf, and until the publiſhing of the ſeveral falſe, ſcandalous, and malicious libels hereafter mentioned, was always eſteemed and reputed to be a man of good name, fame, credit, and reputation, and was a perſon of decent and becoming manners and behaviour: And whereas the ſaid Rees, before and at the ſeveral and reſpective times of the publiſhing of the ſeveral falſe, ſcandalous, and malicious libels hereafter mentioned, was a clerk or clergyman of the church of England as by law eſtabliſhed in holy orders, and was during all that time curate of and to one T. W. then and ſtill being the rector of the rectory of the pariſh of L. in the ſaid county, in the dioceſe of the right honourable lord James B. clerk, lord biſhop of Hereford, at and for a certain yearly ſtipend or ſalary payable to him the ſaid Rees for his ſo officiating as ſuch curate as aforeſaid, and during all the ſaid time of his ſo officiating as ſuch curate in the ſaid pariſh of T. faithfully obſerved and diſcharged his duty as ſuch curate, and behaved and conducted himſelf with decency and decorum, and in a manner ſuitable and proper to his ſaid profeſſional character of a clergyman, and his function and ſituation as ſuch

curate

curate of and within the ſaid pariſh of T. to wit, at, &c.; yet the ſaid Thomas and Richard maliciouſly intending to injure and defame him the ſaid Rees, and to cauſe him to be diſmiſſed and diſcharged from his ſaid curacy or employment of curate of and within the ſaid pariſh of T. in the county aforeſaid, they the ſaid Thomas and Richard heretofore, to wit, on, &c. did falſely and maliciouſly publiſh, and cauſe and procure to be publiſhed a certain falſe, ſcandalous, and malicious libel of and concerning the ſaid Rees as ſuch curate of and within the ſaid pariſh as aforeſaid, in the form and manner of, &c. as then and there being a repreſentation of the principal inhabitants of the ſaid pariſh of T. in the county of S. and dioceſe of Hereford, to the ſaid biſhop of the ſaid dioceſe containing therein, and thereby repreſenting and ſhewing to the ſaid biſhop the falſe, ſcandalous, libellous, and defamatory matter following of and concerning the ſaid Rees, as ſuch curate of and within the ſaid pariſh of T. as aforeſaid, that is to ſay [here recite the libel, and go on]: And the ſaid Thomas and Richard, on, &c. at, &c. wrongfully, falſely, and maliciouſly ſent and cauſed the ſaid libel to be ſent to the ſaid biſhop, and the ſame was, by means of ſuch ſending thereof, then and there received and read by the ſaid biſhop as publiſhed by them the ſaid Thomas and Richard, by reaſon and means of the publiſhing of which ſaid falſe, ſcandalous, and malicious libel and libellous matter of and concerning the ſaid Rees, in manner and by the means aforeſaid, the ſaid Rees is not only hurt and injured in his good name, fame, credit, and reputation, but became and was afterwards, and after the ſaid publiſhing of the ſaid libel and libellous matter, to wit, on, &c. diſcharged from his ſaid curacy or employment of curate of and within the ſaid pariſh of T. and ſo from thence hitherto hath remained and continued, and will ſtill remain and continue, and hath in conſequence thereof ever ſince his ſaid diſmiſſion from his ſaid curacy or employment as curate, loſt and been deprived of all ſalary, benefit, and advantage that would and might otherwiſe have ariſen and accrued to him from the ſame, and is reduced to a ſtate of poverty and miſery, and ſo is likely to continue, to wit, at, &c.: And the ſaid Rees in fact further ſaith, &c. &c. &c.

V. LAWES.

LONDON, to wit. Daniel Surly complains of Thomas Chimcham, gentleman, one of the attornies of the court of our lord the now king, before the king himſelf, being preſent here in court in his own proper perſon, of a plea of treſpaſs on the caſe; for that whereas the ſaid D. now is a good, true, honeſt, juſt, and faithful ſubject of this realm, and as ſuch hath always, from the time of his nativity, hitherto behaved and governed himſelf, and until the writing and publiſhing of the falſe, ſcandalous, and malicious libel hereinafter mentioned by the ſaid Thomas of and concerning the ſaid D was always reputed, eſteemed, and accepted by and among all his neighbours, and

Tort againſt an attorney, for publiſhing a libel, containing words of ſcandal of a wine broker, thereby &c.

other good and worthy ſubjects of this realm to whom he was in any wiſe known, to be a perſon of good name, fame, and credit, to wit, at L. aforeſaid, in the pariſh of Saint Mary le Bow, in the ward of Cheap And whereas the ſaid D. before and at the time of the writing and publiſhing the ſaid libel was, and from thence hitherto hath been, and ſtill is a wine broker, and the buſineſs of a wine broker hath, for and during all that time, uſed, exerciſed, followed, and carried on, and ſtill doth uſe, exerciſe, follow, and carry on, in a certain ſtreet called Great Tower Street, in L. aforeſaid, and the ſaid D hath not ever been guilty, or until the time of writing and publiſhing of the ſaid libel been ſuſpected to have been guilty of perjury, or any other ſuch hurtful crime, by means of which ſaid ſeveral premiſes he the ſaid D before the writing and publiſhing of the ſaid libel, had not only deſervedly gained the good opinion and credit of all his neighbours and other good and worthy ſubjects of this realm to whom he was in any wiſe known, but had alſo thereby acquired, and was then daily and honeſtly acquiring ſundry great gains and profits in his aforeſaid buſineſs to the comfortable ſupport of himſelf and his family, and to the great increaſe of his riches, to wit, at L. aforeſaid, in the pariſh and ward aforeſaid, yet the ſaid Thomas, well knowing all and ſingular the premiſes, but greatly envying the happy ſtate and condition of the ſaid D. and contriving and wickedly and maliciouſly intending to injure the ſaid D. in his aforeſaid good name, fame, and credit, and in his buſineſs aforeſaid, and to bring him into public ſcandal, infamy, and diſgrace with and amongſt all his neighbours and other good and worthy ſubjects of this realm to whom he was in any wiſe known, and to cauſe it to be ſuſpected and believed by thoſe neighbours and ſubjects, that he the ſaid D had been, and was guilty of perjury, and to ſubject him to the pains and penalties by the laws of this kingdom made and provided againſt and inflicted on perſons guilty of perjury, and to vex, harraſs, oppreſs, impoveriſh, and wholly ruin him the ſaid D heretofore, to wit, on the ſixth of May, A. D. 1789, at London aforeſaid, in the pariſh and ward aforeſaid, did falſely and wickedly, wilfully and deſignedly write and publiſh, and cauſe and procure to be written and publiſhed a certain falſe, ſcandalous, and malicious libel of and concerning the ſaid D in the form of a bequeſt to him the ſaid D. by and in the laſt will and teſtament of one Richard Jones, the father in law of the ſaid D. now deceaſed, in which ſaid libel there was and is contained this falſe, ſcandalous, and malicious matter following. that is to ſay, "I (meaning the ſaid Richard Jones) give and bequeath unto my *perjured* ſon in-law Daniel Sully, of Great Tower Street, London, wine broker, (meaning the ſaid Daniel) the ſum of one ſhilling, at the ſame time I (again meaning the ſaid R. J.) pray God to forgive him" (meaning the ſaid D. and thereby then and there meaning that the ſaid D. had been and was guilty of perjury,) by means of the writing and publiſhing of which ſaid falſe, ſcandalous, and malicious libel by the ſaid Thomas of and concerning the ſaid D. he the ſaid D.

hath

hath been, and is greatly injured in his aforeſaid good name, fame, and credit, and brought into public ſcandal, infamy, and diſgrace with and amongſt all his neighbours and other good and worthy ſubjects of this realm, inſomuch that divers of thoſe neighbours and ſubjects, to whom the innocence and integrity of the ſaid D. in the premiſes were unknown, have, on occaſion of the writing and publiſhing of the ſaid libel, from thence hitherto ſuſpected and believed, and ſtill do ſuſpect and believe the ſaid D. to have been, and to be a perſon guilty of perjury, and thereby he the ſaid D. hath been, and is greatly injured in his aforeſaid buſineſs, and otherwiſe, to wit, at L. aforeſaid, in the pariſh and ward aforeſaid, to the damage of the ſaid D of one thouſand pounds, and therefore he prays relief, &c. Pledges, &c.

Drawn by MR. TIDD.

It will be neceſſary in this caſe to prove the publication of the libel by the defendant, but that may be done by proving that he read it over.

And the ſaid Thomas, in his own proper perſon, comes and defends the wrong and injury, when, &c and ſays, that the ſaid D. ought not to have or maintain his aforeſaid action thereof againſt him, becauſe he ſaith that he the ſaid Thomas, before and at the time of the writing and publiſhing the ſaid ſuppoſed libellous matter in the ſaid bill mentioned of and concerning the ſaid D. had been, and was retained and employed by the ſaid R. Jones, deceaſed, in his lifetime, as an attorney at law, to prepare the laſt will and teſtament of the ſaid R J., and that he did accordingly, as ſuch attorney at law, upon ſuch retainer and employment of the ſaid R. J prepare the laſt will and teſtament of him the ſaid R. J. and that the ſuppoſed libellous matter in the ſaid bill mentioned of and concerning the ſaid D. was written and publiſhed by him the ſaid Thomas in the ſaid laſt will and teſtament of the ſaid R J deceaſed, by the expreſs order, authority, and directions of the ſaid R J deceaſed, to him the ſaid Thomas as ſuch attorney as aforeſaid in that behalf given, and that he the ſaid Thomas never wrote or publiſhed the ſaid ſuppoſed libellous matter in the ſaid bill mentioned of and concerning the ſaid D. but in the laſt will and teſtament of the ſaid R J as the attorney of or for the ſaid R J deceaſed, and by ſuch his expreſs order, authority, and directions to him in that behalf given as aforeſaid, and this he the ſaid Thomas is ready to verify, wherefore he prays judgment if the ſaid D. ought to have or maintain his aforeſaid action thereof againſt him, &c. S. SHEPHERD.

Plea, that words were written by defendant in the will which defendant prepared by order of teſtator, and on his retainer.

And the ſaid D. ſays that the ſaid plea of the ſaid Thomas, and the matters thereon contained, in manner and form as the ſame are above pleaded and ſet forth, are not ſufficient in law to bar the ſaid D. from having his aforeſaid action maintained againſt the ſaid J and that he the ſaid D. is not under any neceſſity, nor in any wiſe bound by the law of the land to anſwer the ſame; and

Special demurrer.

this he is ready to verify, wherefore, for want of a ſufficient plea in this behalf, he prays judgment and his damages, by reaſon of the premiſes in the declaration mentioned, to be adjudged to him, &c.. And for cauſes of demurrer in law, the ſaid D. according to the form of the ſtatute in ſuch caſes made and provided, ſets down and ſhews to the court here the following, viz. for that the ſaid Thomas hath not in his ſaid plea averred or ſhewn any venue or place where he was retained and employed by the ſaid R. J. deceaſed, for the purpoſe therein mentioned, or where ſuch order, authority, and directions were given as are in the ſaid plea alledged to have been given by the ſaid R. J. to the ſaid Thomas, and alſo for that the matter ſo pleaded in bar amounts only to the general iſſue, and therefore ought not to have been ſpecially ſet forth; and for that no material or concluſive iſſue can be taken upon the ſaid plea, and the ſaid plea is in various other reſpects inſufficient, defective, and informal

S. MARRYAT.

Having no inſtance to the contrary, I take it for granted that the defendant had in truth ſuch directions from his client as he alledges, but it appears to me his plea is not only exceptionable on the grounds I have aſſigned as cauſes of demurrer, but that it is alſo *ſubſtantially* bad —I am not unapprized of the caſe of Hargrave *v.* Lord Breton, 4 Burr 2422, but think it materially diſtinguiſhable from this. The conſequence of filing a *ſpecial* demurrer will probably be, that defendant will change his plea for the general iſſue, upon which it will be incumbent on the plaintiff to give evidence of the publication of the libel by the defendant, which at preſent ſtands admitted; if, therefore, the proof of the publication be attended with any difficulty, I think it will be adviſable for the plaintiff to ſtrike out the ſpecial cauſes and take the ſenſe of the court upon the real queſtion, on a *general* demurrer, or elſe before he files the *ſpecial* one to ſerve the defendant with a rule to abide by his plea aforeſaid, which the court will hardly ſuffer him to change, but on the terms of his conſenting to admit the publication

S. MARRYAT.

MALICIOUS PROSECUTION.

declaration, the defendant had ſued out a writ of *latitat* againſt the plaintiff, and before the return of that had like ſued out a writ of Middleſex againſt the plaintiff

LONDON, to wit, Richard Berry, late of, &c. and Peter M'Gowan, late of, &c. were attached, &c. unto James Allaway, in, &c. (1) *that whereas he the ſaid James being indebted to the ſaid Richard in a certain ſum of money, to wit, the ſum of twelve pounds of lawful, &c. he the ſaid Richard, for the recovery of ſuch debt or ſum of money, and for no other cauſe of action or ſuit whatſoever*, heretofore, to wit, on, &c. by the ſaid Peter then and there being his attorney at law, on that occaſion ſued and proſecuted out of the (2) court of our lord the now king, before the king

the ſame, the plaintiff paid the debt, and procured his diſcharge, the defendant afterwards plaintiff arreſted by virtue of the writ of *latitat*, and thereby put the plaintiff to great &c.

(1) And whereas the ſaid Richard

himſelf,

himſelf, againſt him the ſaid James (3) a certain writ of our ſaid lord the king called a *latitat*, directed to the ſheriffs of London, *directing* (4) them to take the ſaid James if he ſhould be found in their bailiwick, and to ſafely keep him, ſo that they might have his body before our ſaid lord the king at Weſtminſter on, &c. then next and now laſt paſt to anſwer THE SAID RICHARD IN AND to a certain plea and bill in the ſaid (5) writ *mentioned*, to wit, in a plea of treſpaſs, and alſo to a bill of the ſaid Richard againſt the ſaid James for twenty-four pounds upon promiſes according to the cuſtom of the ſaid court of our ſaid lord the king, before the king himſelf to be exhibited, and that they the ſaid ſheriffs ſhould have there then that writ (6) *And the ſaid Richard alſo* afterwards, and before the return (7) *of the ſaid writ of latitat*, to wit, on, &c. did by the ſaid Peter the attorney at law of him the ſaid Richard on that occaſion ſue and proſecute out of the ſaid court of our ſaid lord the king, before the king himſelf, for the recovery of the ſaid debt or ſum of money ſo to him due and owing aforeſaid, a certain proceſs of our ſaid lord the king at, Weſtminſter, &c. then next and now laſt paſt, and having ſo ſued out ſuch writ and precept as aforeſaid, did, by the ſaid Peter his attorney as aforeſaid, cauſe the ſame to be ſeverally indorſed and marked for bail for twelve pounds and upwards, and did alſo cauſe the ſaid James to be afterwards and before the return of the ſaid precept arreſted and taken into cuſtody under and by virtue of ſuch precept for the ſaid debt or ſum of money for which the ſame was ſo ſued out and iſſued as aforeſaid, to wit, at, &c. And the ſaid James in fact further ſaith, that he the ſaid James having been arreſted under and by virtue of the precept called a bill of Middleſex as aforeſaid for the ſaid debt or ſum of money ſo from him due and owing as aforeſaid, he the ſaid James, after the making of ſuch arreſt, and before the arreſt of him the ſaid James under and by virtue of the ſaid writ of *latitat* as hereafter mentioned, to wit, on, &c. in, &c. paid and cauſed to be paid, that is to ſay, to the ſaid Peter as ſuch attorney as aforeſaid of and for the ſaid Richard, a certain ſum of money, to wit, the ſum of fourteen pounds, in full ſatisfaction and diſcharge as well of the ſaid debt or ſum of money for which the ſaid James was ſo ſued as aforeſaid as of the coſts of him the ſaid Richard. Yet the ſaid James in fact further ſaith, that the ſaid Richard and Peter, contriving and maliciouſly intending to hurt, injure, and prejudice him the ſaid James, afterwards, and after the ſaid Richard had been and was ſo paid and ſatisfied the ſaid debt or ſum of money for which he ſo ſued the ſaid James as aforeſaid, to wit, on, &c. wrongfully, unjuſtly, and maliciouſly, and notwithſtanding ſuch payment and diſcharge of the ſaid debt or ſum of money for which the ſaid writ of *latitat* was ſo iſſued out and proſecuted as aforeſaid, and notwithſtanding ſuch previous arreſt as aforeſaid for the ſame by virtue of the aforeſaid precept called a bill of Middleſex, cauſed and procured the ſaid James to be again arreſted and taken into cuſtody by his body for the ſaid debt or ſum of money by the ſaid ſheriffs under and by virtue of the ſaid writ

(3) "for the recovery of a certain other ſum of money, TO WIT, THE FURTHER SUM OF, &c. then and there being due and owing from the ſaid James to him the ſaid Richard"

(4) "commanding"

(5) "laſt mentioned, *ſcilicet*,"

(6) "which ſaid laſt mentioned writ was then and there marked and indorſed for bail for 24*l.* and upwards; and being ſo indorſed and marked for bail was"

(7) "thereof"

of *latitat*, and to be kept and detained in cuſtody under that arreſt by virtue of the ſaid writ of *latitat*, and under colour and pretence of the ſaid cauſe of action ſo therein ſpecified as aforeſaid, being ſtill exiſting for a long ſpace of time, to wit, for the ſpace of twelve hours then next following: Whereby and by means of which ſaid ſeveral premiſes he the ſaid James was not only impriſoned in manner and for the time aforeſaid, during all which he ſuffered and underwent great anxiety of mind, and was hindered and prevented from following and tranſacting his neceſſary and lawful affairs and buſineſs, but was alſo forced and obliged to lay out and expend divers ſums of money, in the whole amounting to a large ſum of money, to wit, the ſum of five pounds, in and about the obtaining his releaſe and diſcharge from his ſaid impriſonment, and was, *and hath been*, *and ſtill is* (8) *greatly* injured and diminiſhed in his credit, character, and reputation, to wit, at, &c

(8) "alſo further" 2d Count.

And afterwards, &c &c &c [go on as in the laſt Count, omitting the parts in Italic, and inſerting what is in the margin, till you come to this mark ‡ in the margin, when proceed as follows], delivered BY THE SAID PETER AS SUCH ATTORNEY OF THE SAID RICHARD to the ſaid ſheriffs of London, to be by them executed in due form of law, TO WIT, AT, &c And the ſaid James in fact further ſaith, that after ſuch delivery of the ſaid laſt mentioned writ to the ſaid ſheriff of London as aforeſaid, to be executed as aforeſaid, and before the arreſt of him the ſaid James under and by virtue of the ſaid laſt-mentioned writ as hereafter mentioned, to wit, on, &c. he the ſaid James paid (9) TO THE SAID PETER AS SUCH ATTORNEY OF AND FOR THE SAID RICHARD AS AFORESAID, TO AND FOR THE USE OF HIM THE SAID RICHARD, the ſaid debt or ſum of money for which the ſaid laſt-mentioned writ OF LATITAT was ſo ſued out as aforeſaid

(9) "and ſatisfied"

And although the ſaid Richard being then and there plaintiff in the ſaid laſt mentioned action and ſuit, and the ſaid Peter being then and there attorney of and for the ſaid Richard in ſuch action or ſuit, ought (10) TO HAVE THEREUPON FORTHWITH COUNTERMANDED THE EXECUTION OF THE SAID LAST MENTIONED WRIT BY THE SAID SHERIFFS OF LONDON TO WHOM THE SAME HAD BEEN AND WAS SO DELIVERED FOR EXECUTION AS AFORESAID, SO AS TO HAVE PREVENTED THE SAID JAMES FROM BEING TAKEN OR ARRESTED BY VIRTUE OF THE SAME And although the ſaid Richard and Peter could and might have accordingly (11) COUNTERMANDED THE EXECUTION OF THE SAID LAST-MENTIONED WRIT, to wit, at, &c yet the ſaid Richard and Peter, diſregarding their duty in that behalf, AND CONTRIVING and maliciouſly intending to injure and prejudice him the ſaid James, did not, nor did either of them then and there (12) FORTHWITH OR OTHERWISE COUNTERMAND THE

(10) "not to have ſuffered or permitted the ſaid James to have been afterwards arreſted for the ſaid laſt mentioned debt or ſum of money under and by virtue of the ſaid laſt mentioned writ, but ſhould have prevented ſuch arreſt from being made"

(11) "prevented ſaid arreſt and well knew and had notice of the ſaid debt for which the ſaid laſt-mentioned writ was ſo ſued out as aforeſaid having been paid and ſatisfied as aforeſaid

(12) "preventing or hinder the ſaid James from being arreſted and taken into cuſtody by virtue of the ſaid"

EXE-

EXECUTION OF THE SAID laſt-mentioned writ OF LATITAT BY THE SAID SHERIFFS OF L. but wholly neglected, and each of them did neglect ſo to do, (13) WHEREBY THE SAID JAMES WAS AFTERWARDS, AND AFTER HE HAD ſo paid and ſatisfied (14) the ſaid debt for which the ſaid laſt-mentioned writ was ſo ſued out as aforeſaid, AND BEFORE THE TIME APPOINTED FOR THE SAID LAST MENTIONED WRIT, TO WIT, ON, &c. ARRESTED AND TAKEN INTO CUSTODY BY HIS BODY by the ſaid ſheriffs of London under and by virtue of the ſaid laſt-mentioned writ, and UNDER COLOUR AND PRETENCE OF THE CAUSE AND ACTION THEREIN SPECIFIED, AND ON THAT OCCASION was (15) kept and detained (16) in cuſtody (17) FROM THENCE for a long ſpace of time, to wit, for the ſpace of twelve hours then next following [conclude as in firſt Count] And whereas [3d Count ſame as the 2d, inſerting what is in the margin from the beginning of the 2d Count, and leaving out the parts in ſmall capitals, and conclude as before, damages one thouſand pounds.]

V. LAWES.

(13) "and at the contrary thereof afterwards and after the ſaid debt for which ſuch writ was ſo ſued out as aforeſaid had been"

(14) "as aforeſaid, and before the return of the ſaid laſt mentioned writ, to wit, on, &c."

(15) "there"

(16) "ſo"

(17) "and aforeſaid"

under ſuch arreſt as laſt

MIDDLESEX, to wit Charles Legg complains of T. T. D H. and W D. being, &c, for that whereas the ſaid C. at the time of ſuing forth the commiſſion of bankruptcy hereinafter next mentioned is and the ſaid Charles was a farmer, and held as tenant thereof a large farm, conſiſting of divers, to wit, five hundred acres of land, ſituate and being at the pariſh of in the county of Surry and was alſo poſſeſſed of a large ſtock upon the ſaid farm, and of divers goods and chattels of him the ſaid Charles, being in the whole of the value of four thouſand pounds, and the ſaid Charles was happily and comfortably ſituated in and upon the ſaid farm, and was going on therein in a very proſperous and thriving way, and had not at any time before or at the time of ſuing forth the commiſſion or bankruptcy hereinafter mentioned committed any act or acts of bankruptcy whatſoever, nor was a trader within the bankrupt laws, nor in any ways ſubject or liable to have any commiſſion of bankruptcy iſſued forth againſt him, but was in great proſperous and credit amongſt all perſons trading and dealing with him in his buſineſs, yet the ſaid defendant well knowing the premiſes aforeſaid, but falſely, wickedly and maliciouſly contriving and intending unjuſtly to aggravate, injure, and oppreſs the ſaid Charles, and to take away his credit, eſteem, and reputation amongſt his friends, neighbours, and acquaintance, and all other his majeſty's ſubjects, and to procure his ſaid farm, ſtock, goods, and chattels to be ſeized and taken from him under the pretence and colour of the laws of this realm touching bankrupts, and to reſtrain and prevent the ſaid Charles from further following, uſing, and exerciſing his ſaid employment of a farmer, and to reſtrain and prevent the ſeveral and reſpective perſons

Declaration formal againſt ſuing out a commiſſion of bankruptcy againſt plaintiff, who was a farmer, which was afterwards ſuperſeded, *per quod*, plaintiff was turned out of his farm, and his ſtock ſold at an undervalue, and he was entirely ruined.

ſons who were then debtors to the ſaid Charles from paying their reſpective debts due and owing from them reſpectively to him, and to reſtrain and incapacitate the ſaid Charles from receiving and getting in the ſame, and to put the ſaid C. to great expences of his money, and falſely and maliciouſly to cauſe and procure him to be deemed, eſteemed, and adjudged to be a bankrupt, and to ruin him, on the ſixth of January 1776, at Weſtminſter, in the ſaid county, falſely and maliciouſly, and without any reaſonable or probable cauſe whatſoever, ſued and proſecuted, and cauſed to be ſued and proſecuted out of the ſaid court of our ſaid lord the king of his chancery, the ſaid court then and ſtill being held at Weſtminſter, in the ſaid county, a certain commiſſion of bankruptcy of our ſaid lord the king, ſealed with the ſeal of Great Britain, bearing date at Weſtminſter, the ſaid ſixth of January, in the ſaid ſixteenth year of the reign of his ſaid majeſty, againſt the ſaid Charles, directed to A. B. gentleman, whereby after reciting, our ſaid lord the king being informed that the ſaid C. uſing and exerciſing the trade of merchandize by way of bargaining, exchanging, bartering, and cheviſance, ſeeking his trade of living by bargaining and ſelling, did become a bankrupt within the ſeveral ſtatutes made againſt bankrupts to the intent to defraud and hinder the ſaid D. and others his creditors of their juſt debts and duties to them due and owing, our ſaid ſovereign lord the king, minding the due execution of the ſaid ſeveral ſtatutes made againſt bankrupts, did, by his commiſſion under the great ſeal of Great Britain, bearing date at Weſtminſter aforeſaid, on the ſaid ſixth of January, in the ſixteenth, &c. name, aſſign, appoint, conſtitute, and ordain the ſaid, &c. his ſpecial commiſſioners, thereby giving full power and authority to them, four or three of them, to proceed according to the ſaid ſtatutes and all other ſtatutes in force concerning bankrupts, not only concerning the ſaid C. therein called the ſaid bankrupt, his body, lands, tenements, freehold and cuſtomary goods, debts, and other things whatſoever, but alſo concerning all other the perſons who by concealment, claim, or otherwiſe did or ſhould offend touching the premiſes, or any part thereof, contrary to the true intent and meaning of the ſaid ſtatutes, to do and execute all and every thing and things whatſoever as well for and towards ſatisfaction and payment of the ſaid creditors, as towards and for all other intents and purpoſes according to the ordinance and proviſion of the ſame ſtatutes, willing and commanding them, four or three of them, to proceed to the execution and accompliſhment of the ſame commiſſion with all diligence and effect; and ſuch proceedings were thereupon had by the ſaid being three of the ſaid commiſſioners named and authoriſed in and by the ſaid commiſſion, that afterwards, on the eighth of January 1776, at W. aforeſaid, he the ſaid C. upon the proſecution of the ſaid T. D. and W. under colour and pretence of the ſaid commiſſion, was declared a bankrupt, and his ſaid farm and all his ſtock, goods, and chattels, books, papers, and effects were thereupon ſeized and taken from him, *and himſelf obliged at the peril of his life to ſurrender*

render himself, and submit to be examined by and before the said commissioners in the said commission named, four or three of them, and to make a full discovery and disclosure of all his estate and effects before the said commissioners, four or three of them, and which the said C. for the preservation of his life, afterwards, to wit, on the twenty-eighth of February 1776, *at Westminster aforesaid, accordingly did:* And the said Charles further says, that the said commission of bankruptcy afterwards, to wit, on the twenty-eighth of October, in the eighteenth year, &c. at Westminster aforesaid, was duly superseded: And the said Charles further says, that by means of suing out and prosecuting the said commission of bankruptcy against the said Charles as aforesaid by the said defendants, and the several proceedings had thereon before the same could be superseded as aforesaid, the said Charles lost his credit and reputation amongst his friends, neighbours, and acquaintance, and all other his majesty's subjects to whom he was known, and lost the use, benefit, and advantage of his said farm, goods, books, and papers so seized and taken from him, and the same were sold and disposed of under the said commission afterwards, to wit, on the first of October 1776, at W. aforesaid, for a very great undervalue and price, to wit, at the value and price of three hundred and sixty-five pounds, being one thousand pounds less than the same were then worth: And the said Charles hath also by means of the premises necessarily forced and obliged to lay out and expend a large sum of money, to wit, the sum of three hundred pounds in and about the applying for and obtaining a *supersedeas* to the said commission; and the said Charles is thereby totally ruined and undone in his circumstances, to wit, at, &c. [Second Count, same as the first as far as in Italic, which leave out, and insert in its place "and also at a very great undervalue, to wit, at the undervalue of six hundred pounds," then aver the *supersedeas*, and finish as following]: And the said Charles further says, that by means of suing out and prosecuting the said commission of bankruptcy against the said Charles as aforesaid by the said defendants, he the said Charles was turned out of his said farm, and was rendered unable to gain his livelihood, and has been stripped of all his property, and has been and is entirely ruined: And the said Charles hath also by means of the premises last aforesaid been necessarily forced and obliged to lay out and expend, and hath necessarily laid out and expended a large sum of money, to wit, pounds, in and about the applying for and obtaining a *supersedeas* to the said commission, to wit, at, &c.; damages one thousand pounds.

It is not necessary to aver that the plaintiff did not commit an act of bankruptcy. Chapman *v.* Pickersgill, 2 Wilson 145.

Declaration for maliciously arresting plaintiff and holding him to bail.

FOR that whereas the ſaid plaintiff now is a good, &c. and as ſuch hath, &c. and until the time of the committing of the grievance hereafter mentioned, and of the ſpeaking, &c. by the ſaid defendant of and concerning the ſaid plaintiff was always reputed, &c. to be a perſon, &c. to wit, at, &c.: And whereas he the ſaid plaintiff before and on, &c. and alſo before the committing of the grievance hereafter, &c. and the ſpeaking, &c. of the, &c. by the ſaid defendant of and concerning the ſaid plaintiff, to wit, at, &c. was lawfully poſſeſſed of and in a certain meſſuage or dwelling-houſe, ſituate, ſtanding, and being, &c. and alſo of and in a certain ſtock in trade, houſehold furniture, and other property of him the ſaid plaintiff to a large amount, to wit, &c. at, &c. ſtored and being in the ſaid meſſuage or dwelling-houſe of the ſaid plaintiff, to wit, at, &c.: And whereas the ſaid ſtock in trade, houſehold furniture, and other property of him the ſaid plaintiff ſo as aforeſaid being in the ſaid meſſuage or dwelling-houſe of the ſaid plaintiff were before and on the ſame day and year, to wit, on, &c. duly inſured by him the ſaid plaintiff from loſs or damage by fire in a certain ſociety or office commonly called the Sun Fire Office in London to the amount of the juſt and true value thereof, to wit, at, &c.: And whereas the ſaid plaintiff ſo being poſſeſſed as aforeſaid of and in the ſaid meſſuage or dwelling-houſe, and of and in the ſaid ſtock in trade, houſehold furniture, and other property of him the ſaid plaintiff in the ſaid meſſuage of the ſaid plaintiff, being as aforeſaid, were ſo inſured as aforeſaid, to wit, on, &c. not only the ſaid meſſuage and dwelling-houſe of him the ſaid plaintiff was by mere accident and unavoidable misfortune much and greatly damaged by fire, but the ſaid ſtock in trade, houſehold furniture, and other property of him the ſaid plaintiff ſo as aforeſaid inſured were then and there alſo by mere accident and unavoidable misfortune wholly burnt and conſumed by fire, to wit, at, &c.: And whereas the ſaid plaintiff by means of his ſaid ſtock in trade, houſehold furniture, and other property ſo inſured as aforeſaid being burnt and conſumed by fire as aforeſaid, did ſuffer a damage or loſs to the amount or ſum of ſix hundred and fifty-one pounds of lawful, &c. by means whereof the ſtock and fund of the ſaid ſociety were liable and ſubject to pay to the ſaid plaintiff, and the ſaid plaintiff became and was legally and juſtly entitled to receive of and from the ſaid ſociety or office the ſaid ſum of, &c. being the true and real amount of ſuch his damage or loſs as aforeſaid, to wit, at, &c.: And whereas the ſaid plaintiff hath not ever been guilty, or until the time of the committing of the grievance hereafter next mentioned, and of the ſpeaking, &c. of the ſeveral, &c. by the ſaid defendant of and concerning the ſaid plaintiff been ſuſpected to have been guilty of arſon, burning of houſes, felony, or fraud, or of any ſuch hurtful crime; by means of which ſaid ſeveral premiſes he the ſaid plaintiff had before the committing, &c. and alſo before the ſpeaking, &c. deſervedly obtained the benevolence, &c. to wit, at, &c.; yet the ſaid defendant well knowing

knowing all and ſingular, &c. but contriving, &c. not only to injure, &c. and to make it be believed and credited that the ſaid plaintiff was and is a perſon guilty of arſon, and to ſubject him to the pains and penalties, &c. but alſo to make it be credited and believed that the ſaid plaintiff had been and was at the time the fire ſo happened as aforeſaid inſured at a much larger ſum of money than his ſaid ſtock in trade, houſehold furniture, and other property which had been and were ſo inſured, and had been and were ſo burnt and conſumed as aforeſaid were juſtly worth, and that he the ſaid plaintiff had felonioufly, voluntarily, and maliciouſly ſet fire to his ſaid meſſuage or dwelling-houſe with intent to conſume the ſame, and that the ſaid plaintiff had felonioufly, &c. burnt and conſumed his ſaid ſtock, &c. ſo therein being as aforeſaid, with an intent, &c. and in order and on purpoſe to cheat and defraud the ſaid ſociety or office of a large ſum of money beyond and more than the juſt and true value thereof, and to prevent and hinder the ſaid plaintiff from reaping any benefit from his ſaid inſurance, and from receiving and from being paid by the ſaid ſociety or office the ſaid damage or loſs of, &c. which he the ſaid plaintiff had ſo as aforeſaid ſuſtained by means and on account of the ſaid fire, and againſt which he was ſo inſured as aforeſaid, and to diſquiet the ſaid plaintiff, and to make him ſuffer and undergo many arduous labours and troubles both of body and mind, and to wholly impoveriſh and ruin him, heretofore, to wit, on, &c. falſely, &c. and without, &c. made a complaint againſt the ſaid plaintiff before A. B. eſquire, then and ſtill being one of the juſtices of our lord the now king, aſſigned to keep the peace of our ſaid lord the king in and for the county of M. and alſo to hear and determine divers felonies, &c. committed in, &c. and then and there charged and accuſed him the ſaid plaintiff, and impoſed on him the crime of felony, to wit, with having felonioufly, &c. ſet fire to his ſaid meſſuage, &c. and then and there upon the ſaid complaint ſo as aforeſaid falſely, &c. made by the ſaid defendant againſt the ſaid plaintiff as aforeſaid forced and obliged the ſaid plaintiff to be and appear, and the ſaid plaintiff was thereby then and there convened and obliged to appear, and did then and there appear before the ſaid juſtice to anſwer the premiſes ſo as aforeſaid, falſely, &c. laid to his charge, and the ſaid defendant alſo then and there, to wit, on, &c. at, &c. falſely, &c. and without any, &c. cauſed and procured the ſaid plaintiff to be examined by and before the ſaid juſtice of and upon, touching and concerning the ſaid crime ſo as aforeſaid falſely, &c. laid to his charge and alledged againſt him, and to be kept and detained in cuſtody under ſuch examination for a long time, to wit, for, &c. then next following under colour and pretence of the ſaid ſuppoſed crime, when in truth and in fact the ſaid plaintiff was not nor is in anywiſe guilty of the ſaid felony and premiſes ſo as aforeſaid falſely, &c. by the ſaid defendant alledged againſt him the ſaid plaintiff, and ſo it then and there falſely appeared on the ſaid examination of the ſaid plaintiff to the ſaid A. B. eſquire, ſo being, &c. whereupon the ſaid A. B.

being,

being, &c. upon the ſaid examination of the ſaid plaintiff, and after he had fully heard and conſidered every thing that the ſaid defendant could ſay or alledge againſt him the ſaid plaintiff touching the ſaid ſuppoſed crime, to wit, on, &c. at, &c. wholly acquitted and diſcharged the ſaid plaintiff of and from the ſaid ſuppoſed crime, to wit, at, &c.: And the ſaid defendant further contriving and maliciouſly intending as aforeſaid, heretofore, to wit, on, &c. in a certain diſcourſe which he the ſaid defendant then and there had with divers good and worthy ſubjects of this realm of and concerning the ſaid plaintiff, and of and concerning the ſaid fire that had ſo as aforeſaid accidentally happened in his ſaid meſſuage on, &c. then and there falſely, &c. rehearſed, proclaimed, and loudly publiſhed of and concerning the ſaid plaintiff, in the preſence and hearing of thoſe ſubjects, theſe falſe, &c. &c. &c. [there were ſeventeen Counts nearly the ſame as the foregoing, that is, they were all for words]: By reaſon and means of which ſaid proſecution of the ſaid plaintiff by the ſaid defendant in the ſaid firſt Count mentioned, and the ſpeaking, &c. of which ſaid ſeveral falſe, &c. words hereinbefore mentioned by the ſaid defendant of and concerning the ſaid plaintiff, he the ſaid plaintiff is not only greatly hurt and injured in his aforeſaid good name, &c. and brought into public ſcandal, infamy, and diſgrace with and amongſt all his neighbours and divers other good and worthy ſubjects of this realm, inſomuch that divers of thoſe ſubjects and neighbours to whom the innocence and integrity of the plaintiff in the premiſes were unknown, have on occaſion of the ſaid premiſes ſuſpected, and ſtill do ſuſpect the ſaid plaintiff to have been and to be a perſon guilty of arſon, and that he feloniouſly, &c. ſet fire to his ſaid meſſuage, and have on that occaſion from thence hitherto wholly refuſed, and ſtill do daily more and more refuſe to have any commerce, acquaintance, or diſcourſe with him, or to have any thing to do with him as they were before uſed and accuſtomed to do, and would have done again had not the ſaid plaintiff been ſo as aforeſaid proſecuted by the ſaid defendant, and had not the ſaid ſeveral words been ſo as aforeſaid ſpoken and publiſhed by the ſaid defendant of and concerning him the ſaid plaintiff, but alſo by reaſon and means and on account of the premiſes hereinbefore mentioned and for no other reaſon, by no other means, and on no other account whatſoever the ſaid ſociety have hitherto refuſed, and ſtill do refuſe to pay to the ſaid plaintiff his ſaid inſurance, damage, or loſs of, &c. which he the ſaid plaintiff had and has ſo as aforeſaid ſuſtained and ſuffered by the means and on account of the ſaid fire, and againſt which he was ſo inſured by the ſaid ſociety, or any part thereof, and the ſame and every part thereof, on occaſion and by means and on account of the premiſes aforeſaid remain due, owing, and unpaid to the ſaid plaintiff; and the ſaid plaintiff by and on account of the ſaid premiſes, and on no other account whatſoever, has been hindered and prevented from recovering the ſame, or any part thereof, and is in great danger of wholly loſing the ſame: And the ſaid plaintiff alſo by reaſon

of

of the premiſes was and has been forced and obliged to ſuffer and undergo, and did ſuffer, &c. and hath ſuffered, &c. many great and arduous, &c. and to lay out and expend, &c. And the ſaid plaintiff is alſo by means of the premiſes aforeſaid greatly injured and damnified, and very much impoveriſhed, and almoſt wholly ruined, to wit, at, &c.; damages two thouſand pounds, &c.

C. RUNNINGTON.

Declaration ſuing a writ of the Marſhal ſea court.

SURREY, to wit. P. S. complains of J. S. being, &c.; for that whereas by the laws and cuſtoms of this realm no perſons whatſoever ought to be arreſted and impriſoned in any perſonal action at the ſuit of any ſuch perſon without a reaſonable or probable cauſe or juſt pretence of action or ſuit for ſuch arreſt or impriſonment againſt ſuch perſon ſo arreſted or impriſoned; yet the ſaid defendant well knowing the premiſes aforeſaid, but contriving and wickedly and falſely and maliciouſly intending to hurt, injure, prejudice, and aggrieve the ſaid plaintiff, and without any reaſonable or probable cauſe, or juſt pretence of action or ſuit to arreſt and impriſon, and cauſe and procure to be arreſted and impriſoned the ſaid plaintiff, and him to detain and cauſe to be detained and impriſoned for a long time, and to deter the friends and acquaintance of the ſaid plaintiff from becoming bail for him the ſaid plaintiff, heretofore, to wit, that is to ſay, at the court of record of our ſovereign lord the now king of his palace of Weſtminſter, held at Southwark, in the county of Surrey aforeſaid, within the juriſdiction of the ſaid court, on Friday the tenth day of July, in the twelfth year of the reign of our lord the now king, before William, earl Talbot, ſteward of the king's houſehold, ſir Sidney Meadow, knight, marſhall of the ſaid houſehold, and Leſett Blackborne, eſquire, ſteward of the ſaid court, judges of the ſaid court, by virtue of the letters patent of Charles the Second, late king of England, and bearing date at Weſtminſter, the fourth day of October, in the ſixteenth year of his reign, came the ſaid defendant in his own proper perſon, and then and there in the ſame court falſely and maliciouſly, and without any juſt, reaſonable, or probable cauſe, levied a plaint at the ſuit of the ſaid defendant againſt him the ſaid plaintiff in a plea of treſpaſs on the caſe to the damage of ninety-nine ſhillings, and then and there found pledges to proſecute his ſaid plaint, to wit, John Doe and Richard Roe: And the ſaid defendant further falſely and maliciouſly, and without any reaſonable or probable cauſe whatſoever, afterwards, to wit, at the court of record of the ſaid lord the now king of his palace aforeſaid, held at Southwark aforeſaid, within the county and juriſdiction aforeſaid, on Friday the ſeventeenth day of July A. D. 1772, before the ſaid then judges of the ſaid court of record of our ſaid lord the now king on the ſaid plaint, a certain writ of our ſaid lord the now king of *capias ad reſpondendum*, in the ſaid place againſt the ſaid plaintiff, directed to the bearers of the virges of the king's houſehold, the officers and

and miniſters of that court, and of every of them, commanding them and every of them that they or one of them ſhould take the ſaid plaintiff if he ſhould be found in the juriſdiction of the ſaid court, and him ſafely keep, ſo that they or one of them might have his body before the judges of the ſaid court at the then next court of the king's palace at Weſtminſter, on Friday the twenty-fourth day of July then next following, to be held at Southwark, in the county of Surrey, to anſwer the ſaid defendant of the ſaid plea of treſpaſs on the caſe, to the damage of ninety-nine ſhillings, and that they or one of them ſhould have there then that writ, which ſaid writ the ſaid defendant then and there falſely and maliciouſly cauſed to be indorſed for bail for two pounds and upwards againſt the ſaid plaintiff: And the ſaid defendant further falſely and maliciouſly, and without any reaſonable or probable cauſe whatſoever, afterwards and before the return of the ſaid writ, to wit, on the twenty-ſecond day of July A. D. 1772, at Southwark aforeſaid, in the county of Surrey, cauſed and procured the ſaid plaintiff to be arreſted and taken by his body by one of the bearers of the virges of the king's houſehold, and an officer and miniſter of the ſaid court, and to be kept and detained in cuſtody on that occaſion for a long time, to wit, for the ſpace of five months then next following, without any reaſonable or probable cauſe whatſoever, when in truth and in fact the ſaid defendant had not either at the time of the levying of the ſaid plaint or at the time of the making of the ſaid arreſt and impriſonment, and detaining in priſon of the ſaid plaintiff in manner and form aforeſaid made, or at any of thoſe times any juſt, reaſonable, or probable cauſe, or pretence of action or ſuit againſt the ſaid plaintiff, whereby or for which the ſaid plaintiff ought to have been arreſted, impriſoned, or detained.

Rough draught of a declaration for ſtopping and advertiſing ſilver plates which plaintiff offered for ſale to defendant, and impoſing the crime of felony on the plaintiff.

LONDON, to wit. Judah Eliazer complains of George Barnett, being, &c.; for that whereas the ſaid plaintiff now is a good, true, honeſt, juſt, and faithful ſubject of this realm, and as ſuch good, true, honeſt, and faithful ſubject from the time of his nativity hitherto hath always behaved, had, and governed himſelf, and has for all the time aforeſaid been held and reputed amongſt all his neighbours and other worthy ſubjects of this realm to be a man of good name, fame, credit, and reputation, and has always for his lifetime paſt hitherto lived and continued free, untouched, unſpotted, and wholly unſuſpected of and from all and all manner of theft, larceny, robbery, felony, trickery, deceit, or falſehood, or any other ſuch hurtful crime; by means of which ſaid premiſes he the ſaid plaintiff before the ſeveral grievances hereafter mentioned had deſervedly obtained and got to himſelf the benevolence, good opinion, and credit of all perſons always acquainted with him, and other good and worthy ſubjects of this realm: And whereas the ſaid plaintiff on the twentieth of February A. D. 1748, at L. aforeſaid, in the pariſh of

of Saint Mary-le-bow, in the ward of Cheap, was poſſeſſed of nine chaſed ſilver plates for tops of ſnuff-boxes, and was then and there well entitled to ſell and diſpoſe of the ſame; and being ſo thereof poſſeſſed, he the ſaid plaintiff, on the ſame day and year, at L. aforeſaid, in the pariſh and ward aforeſaid, offered the ſame to ſale to the ſaid defendant, and the ſaid defendant thereupon then and there ſtopped and detained the ſaid nine chaſed ſilver plates in his cuſtody under pretence that the ſame had been ſtolen, and not honeſtly come by, although the ſame had not been ſtolen, but were by the ſaid plainiff honeſtly come by; yet the ſaid defendant, well knowing the premiſes, but greatly envying the happy ſtate and condition of the ſaid plaintiff, and contriving and maliciouſly intending to hurt, injure, and prejudice the ſaid plaintiff in his good name, fame, credit, and reputation, and to cauſe him to be reputed to be a thief and a felon, on the twenty-ſecond day of February A. D. 1748 aforeſaid, at L. &c. aforeſaid, did wickedly and maliciouſly, falſely, unjuſtly, and ſcandalouſly compoſe, write, print, and publiſh, and did cauſe and procure to be compoſed, written, printed, and publiſhed of and concerning the ſaid plaintiff a certain wicked, infamous, ſcandalous, and defamatory libel of and concerning the ſaid plaintiff in a certain public newſpaper or paper of intelligence, entitled, (Number 5339) the Daily Advertiſer, Monday, February the twenty-ſecond 1748, in which ſaid wicked, infamous, ſcandalous, and defamatory libel were and are contained the falſe, ſcandalous, opprobrious, and defamatory words following, that is to ſay, "Stopped, ſuppoſed to be ſtolen, nine chaſed ſilver plates for tops of ſnuff-boxes unfiniſhed (meaning the ſaid chaſed ſilver plates for tops of ſnuff-boxes ſo offered for ſale as aforeſaid); eight of them (meaning eight of the ſaid nine ſilver plates) deſigned for furbelow boxes, and one of them (meaning one of the ſaid ſilver plates) a round one, reſembling a Dutch drinking piece, the lower part a man holding a jug in his hand looking to ſee if it is almoſt out, the ſcroll reſembling a vine top and bottom; the other eight reſembling ſcrolls and flowers. They (meaning the ſaid nine ſilver plates) were offered by a jew (meaning the ſaid plaintiff who ſo offered the ſaid nine ſilver plates, to ſell to the ſaid defendant), and which ſaid plaintiff then was of the jewiſh religion, who (meaning the ſaid plaintiff) owned them (meaning the ſaid nine ſilver plates) to be ſtolen. The perſon whoſe property they (meaning the ſaid nine ſilver plates) are may have them (meaning the ſaid nine ſilver plates) again without fee or reward by applying to George Barnett, cutler and toyman, the corner of Cornhill, near the Manſion Houſe" (meaning the ſaid G. B. the now defendant); when in truth and in fact the ſaid plaintiff before the compoſing, writing, printing, and publiſhing of the ſaid libel had never owned the ſaid nine chaſed ſilver plates or any of them to be ſtolen, nor were the ſame or any of them ever ſtolen: And the ſaid defendant, further contriving and maliciouſly &c. as before [another libel as before]; by means of which ſaid premiſes [as in the other concluſions]: And whereas the ſaid

plaintiff now is, &c. [as before]; yet the ſaid defendant, knowing the premiſes, &c. on the twenty-ſecond of February, in the year aforeſaid, at L. aforeſaid, falſely and maliciouſly, and without any reaſonable or probable cauſe whatſoever, openly and publicly impoſed the crime of felony on ſaid plaintiff, and then and there falſely and maliciouſly, and without any reaſonable or probable cauſe whatſoever, charged and accuſed the ſaid plaintiff with having ſtolen nine other ſilver plates for tops of ſnuff boxes; and the ſaid defendant further intending, &c. (another charge of felony generally); by means whereof, &c.: And whereas, &c. (for words).

Drawn by MR. WARREN.

Declaration for maliciouſly charging the plaintiff with bigamy before a juſtice of the peace, cauſing the juſtice to make out a warrant for apprehending the plaintiff, and giving another warrant for his commitment, preferring at the quarter ſeſſions a bill of indictment, which was found *ignoramus*.

MIDDLESEX, to wit. W. W. complains of J. H. and S. W. in a plea of treſpaſs on the caſe; for that whereas the ſaid plaintiff now is a good, true, honeſt, juſt, and faithful ſubject of this realm, and as ſuch hath always hitherto behaved and conducted himſelf without ever having been guilty, or ſuſpected to have been guilty of polygamy, or of marrying a ſecond wife during the life of the firſt, or of any ſuch crime or offence, and until the committing of the grievance hereafter mentioned, was a perſon of good name, fame, credit, and reputation; yet the ſaid defendants, well knowing the premiſes, but contriving and maliciouſly intending to injure the ſaid plaintiff in his aforeſaid good name, &c. heretofore, that is to ſay, on, &c. at, &c. in, &c. falſely and maliciouſly, and without any reaſonable or probable cauſe whatſoever, made complaint againſt the ſaid plaintiff to and before G. R. eſquire, then and there being one of the juſtices of our lord the now king aſſigned to keep the peace of our ſaid lord the king in and for the ſaid county of Middleſex, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdeeds committed in the ſaid county, and then and there on that complaint falſely and maliciouſly, and without any reaſonable or probable cauſe whatſoever, charged and accuſed him the ſaid plaintiff with having before then felonioufly married one M. B. his former wife being then alive, and then and there falſely and maliciouſly, and without any reaſonable or probable cauſe whatſoever, cauſed and procured the ſaid juſtice to make out and grant his warrant under his hand and ſeal for apprehending the ſaid plaintiff, and carrying him before the ſaid juſtice or ſome other of his majeſty's juſtices for the ſaid county, for and under colour and pretence of ſuch ſuppoſed offence, and afterwards, on, &c. at, &c. falſely and maliciouſly, and without any reaſonable or probable cauſe, cauſed and procured the ſaid plaintiff to be apprehended and taken into cuſtody under and by virtue of the ſaid warrant, and to be carried and conveyed in cuſtody to and before the ſaid J. R. ſo being ſuch juſtice as aforeſaid; and there to be examined by and before the ſaid juſtice touching and concerning the ſaid ſuppoſed offence, and then and there falſely and maliciouſly, and without any reaſonable or probable cauſe whatſoever, cauſed and procured the ſaid juſtice to make

make out and grant his certain warrant of commitment, and to accordingly commit him the ſaid plaintiff in the cuſtody of the keeper of his majeſty's goal of Newgate, there to remain under colour of ſuch ſuppoſed offence as aforeſaid until diſcharged by law; and afterwards, to wit, at the general quarter ſeſſions of the peace of our lord the king, holden in and for the county of M. on, &c. in the twenty-eighth year of the reign of, &c. before W. M. &c. &c. &c. and others their fellow juſtices of our ſaid lord the king, aſſigned to keep the peace in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdeeds committed in the ſame county, they the ſaid defendants falſely and maliciouſly, and without any reaſonable or probable cauſe whatſoever, preferred, and cauſed and procured to be preferred to the grand inqueſt of our ſaid lord the king then and there at that ſeſſion duly ſworn and charged to enquire for our ſaid lord the king, and the body of the ſaid county of Middleſex, a certain bill of indictment againſt the ſaid plaintiff for the ſaid ſuppoſed offence ſo charged and objected againſt him as aforeſaid, which ſaid bill of indictment was not then and there, or at any other ſeſſions found a true bill againſt the ſaid plaintiff, but the jurors of the ſaid grand inqueſt did then and there at that ſeſſion return the ſaid bill of indictment into the court of the ſaid ſeſſion not found: And the ſaid plaintiff in fact ſays, that he was not nor is guilty of the premiſes ſo alledged and objected againſt him, and for which he was ſo indicted as aforeſaid, and that the ſaid proſecution ſo inſtituted againſt him as aforeſaid was and is long ſince ended and determined; by means of which ſaid ſeveral premiſes the ſaid plaintiff is greatly injured in his aforeſaid good name, &c. and is brought into public hatred, ſcandal, ignominy, and diſgrace amongſt all his neighbours and friends, and other good and worthy ſubjects of this realm, and was not only impriſoned in manner and for the time aforeſaid, but alſo for a much longer ſpace of time under his aforeſaid commitment to Newgate, to wit, for the ſpace of one month, and until he was diſcharged from thence by due courſe of law, and the ſaid plaintiff was alſo, on occaſion of the premiſes aforeſaid, forced and obliged to lay out and expend a large ſum of money, to wit, the ſum of one hundred pounds of, &c. in and about obtaining his diſcharge of his impriſonment, and in maintaining himſelf whilſt in priſon, to wit, at, &c.: And the ſaid plaintiff further ſays, that the ſaid defendants further contriving and maliciouſly intending to injure him the ſaid plaintiff in his aforeſaid good name, &c. heretofore, to wit, on, &c. at, &c. falſely and maliciouſly, and without any reaſonable or probable cauſe whatſoever, made complaint againſt the ſaid plaintiff to and before the ſaid G. R. eſquire, then and there being ſuch juſtice as aforeſaid, and then and there on that complaint falſely and maliciouſly, and without any reaſonable, &c. charged and accuſed him the ſaid plaintiff with having before then feloniouſly married one M. B. his former wife being then alive, and then and there falſely and maliciouſly, and without any reaſonable or probable cauſe

Compare this with the caption of the ſeſſions.

The indictment ought to be ſet out verbatim here.

2d Count, for charging the plaintiff with bigamy, and making him appear there, and cauſing him to commit the plaintiff, who was not guilty of the charge

whatſoever, cauſed the ſaid plaintiff to go and be, and appear, and to be carried before the ſaid G. R. ſo being ſuch juſtice as aforeſaid, and there to be examined by and before the ſaid juſtice touching the ſaid laſt-mentioned ſuppoſed offence, and then and there falſely and maliciouſly, and without any reaſonable, &c. cauſed and procured the ſaid juſtice to commit him the ſaid plaintiff into the cuſtody of the keeper of his majeſty's gaol of Newgate, there to remain charged with and under colour of the ſaid laſt-mentioned offence, whereas in truth and in fact he the ſaid plaintiff was not nor is guilty of the ſaid offence ſo charged and alledged againſt him as laſt aforeſaid: And the ſaid plaintiff further ſaith, that he hath not been as yet proſecuted with effect for ſuch offence, and that the ſaid laſt-mentioned complaint is long ſince ended and determined; by means of which ſaid laſt-mentioned premiſes he the ſaid plaintiff was and is further injured in his aforeſaid good name, &c. and was impriſoned in manner aforeſaid, and for a long ſpace of time under his ſaid laſt-mentioned commitment, to wit, for the ſpace of one month, and he the ſaid plaintiff alſo was, on occaſion of the premiſes in this Count mentioned, forced and obliged to lay out and expend a large ſum of money, to wit, the ſum of one hundred pounds, in and about obtaining his diſcharge from his ſaid laſt-mentioned impriſonment, to wit, at, &c.

N. B. The plaintiff in this caſe was not able to get a copy of the indictment.

V. LAWES.

Declaration for a malicious proſecution of an action in aid againſt defendant and another; *for good*, A. arreſts him, B. detains him in cuſtody, C. ſeizes his goods.

MIDDLESEX, to wit. J. B. P. complains of J. R.; for that the ſaid defendant wickedly, fraudulently, injuriouſly, and maliciouſly contriving to hurt and injure the ſaid plaintiff, and to cauſe him to be unjuſtly arreſted and impriſoned *by our ſovereign lord the king, and to cauſe the lands and tenements, goods and chattels, debts, credits, ſpecialties, and ſums of money of the ſaid plaintiff, to be wrongfully extended and ſeized, and thereby wrongfully and injuriouſly to deprive the ſaid plaintiff of his perſonal liberty, and of the uſe, enjoyment, benefit, and advantage of his lands and tenements*, &c. and to bring him the ſaid plaintiff into great diſgrace among his neighbours and other the king's faithful ſubjects, and to put him to great expences, and to haraſs, vex, and oppreſs the ſaid plaintiff, and to bring him to ruin, *on the ſecond of March A. D. 1778, at*, &c. he the ſaid defendant, to carry into effect his ſaid malicious purpoſes *and intentions, did wrongfully, fraudulently, deceitfully, falſely, and maliciouſly ſuggeſt and repreſent, and cauſe to be ſuggeſted and repreſented to ſir J. S. knight, chief baron of his majeſty's court of exchequer at Weſtminſter, that he the ſaid defendant was a debtor of our ſaid lord the king, and that he the ſaid plaintiff was ſeverally, juſtly, and truly indebted to him the ſaid defendant in the ſum of ſix hundred and thirty pounds of*, &c. *for money advanced by the ſaid defendant to the ſaid plaintiff and J. R. to ſecure the payment*

ment of which money, he the ſaid plaintiff, by a promiſſory note ſigned by him the ſaid plaintiff, bearing date the fifth day of, &c. promiſed to pay the ſaid J. R. or order the ſum of ſix hundred and thirty pounds value received, which ſaid note was indorſed by the ſaid J. R. to one R. T. and by the ſaid R. T. to the ſaid defendant; and that the ſaid plaintiff and J. R. as the ſaid defendant was informed and verily believed, were failed in their credit and circumſtances, and did abſcond to avoid being arreſted, and that the ſaid ſum of ſix hundred and thirty pounds was a debt originally and bona fide due and owing to the ſaid defendant in manner aforeſaid, and was not in truſt for any perſon or perſons, and that the ſaid ſum of ſix hundred and thirty pounds ſo due to the ſaid defendant was in danger of being loſt, unleſs a more ſpeedy courſe than the uſual way of proceedings ſhould be forthwith taken to recover the ſame; and the ſaid defendant, by means of ſuch falſe, fraudulent, unjuſt, and deceitful ſuggeſtion and repreſentation, and in order to carry into effect his ſaid malicious purpoſes and intentions, afterwards, to wit, on, &c. in the eighteenth year of the reign of, &c. at, &c. did wrongfully, falſely, fraudulently, maliciouſly, and injuriouſly cauſe and procure to be iſſued by and out of his majeſty's court of exchequer at Weſtminſter, a certain writ of our ſaid lord the king directed to the ſheriff of Middleſex, whereby our ſaid lord the king, after reciting that, &c. &c. commanded the ſaid ſheriff that, &c. &c. [here recite the writ of extent againſt plaintiff throughout]; by virtue of which ſaid writ the ſaid defendant afterwards falſely and maliciouſly for the intents and purpoſes aforeſaid, cauſed an inquiſition to be taken at the houſe known by the ſign of the Three Tuns, in Brook ſtreet, near Holborn, in the county of M. the ſecond day of , in the eighteenth year aforeſaid, before ſheriff of the county of Middleſex aforeſaid, on the oath of twelve good and lawful men of the ſaid ſheriff's bailiwick, whereby it was found that the ſaid plaintiff made a note in writing, bearing date, &c. with his own proper hand thereunto ſubſcribed, and thereby nine months after date of the ſaid note promiſed to pay to J. R. or his order the ſum of ſix hundred and thirty pounds value received, which ſaid note was indorſed by the ſaid J. R. to one R. T. and by the ſaid R. T. to the ſaid defendant; whereby and by force of the ſtatute in ſuch caſe made and provided, they became ſeverally liable to pay to the ſaid defendant the ſaid ſum of money in the ſaid note mentioned, according to the tenor and effect of the ſaid note and the ſaid indorſement ſo made thereon as aforeſaid; which ſaid debt of ſix hundred and thirty pounds ſo due as aforeſaid the ſaid ſheriff, on the day of taking the ſaid inquiſition, ſeized and took into his majeſty's hands according to the command of the ſaid writ, as by the ſaid writ and return thereof, and the inquiſition thereto annexed remaining in his majeſty's ſaid court of exchequer at Weſtminſter appears; and the ſaid defendant, by means of his ſaid falſe, fraudulent, unjuſt, and deceitful ſuggeſtion and repreſentation ſo made to the ſaid chief baron as aforeſaid, and for the malicious intents and purpoſes aforeſaid, afterwards, to wit,

"In ad-
dition."
"and with-
any reason-
or proba-
cause what-
ever,"
"that by

on the said second of in the *said* (1) eighteenth year of, &c. did wrongfully, falsely, fraudulently, maliciously, and injuriously (2) cause and procure to be issued by and out of his majesty's said court of exchequer at Westminster, a certain other writ of our said lord the king directed to the sheriff of the county of Middlesex; by which said writ his said majesty, after reciting *the said* (3) inquisition, &c. commanded, &c. [here recite the whole of the extent in aid]: And the said defendant, in further prosecution of his said malicious intents and purposes against the said plaintiff, afterwards and before the return of the said last-mentioned writ, to wit, on, &c. at, &c. wrongfully, &c. delivered, and caused to be delivered the said last-mentioned writ to the said , then and still being sheriff of the said county of Middlesex, to be executed in due form of law, and then and there required the said sheriff to execute the same, by virtue whereof the said sheriff afterwards and before the return of the said last-mentioned writ, to wit, on, &c. at, &c. within the bailiwick of the said sheriff, took and arrested the body of the said plaintiff, and seized and took into the said sheriff's custody divers household furniture, goods, and chattels of the said plaintiff, and kept and detained as well the body as the said household goods, &c. of the said plaintiff in the custody of the said sheriff, by virtue of the said last-mentioned writ of extent until the same writ of extent was superseded in respect of the said plaintiff as hereafter mentioned; and the said plaintiff avers, that the said last-mentioned writ of extent, on, &c. was superseded in respect of the said plaintiff by virtue of his said majesty's writ of supersedeas issued out of his said majesty's court of exchequer at Westminster for that purpose, and the said last-mentioned writ of extent, in respect of the said plaintiff, was and is ended, to wit, at, &c. *whereas in truth and in fact the said plaintiff was not severally, justly, and truly indebted to him the said defendant in the sum of six hundred and thirty pounds for money advanced by the said defendant to the said plaintiff and J. R; and whereas in truth and in fact the said plaintiff did not, to secure the repayment of any sum of money advanced by the said defendant to the said plaintiff, and the said J. R. make the said promissory note to the said J. R.; and whereas in truth and in fact the said plaintiff was not failed in his credit and circumstances, and did abscond to avoid being arrested; and whereas in truth and in fact the said sum of six hundred and thirty pounds was not a debt orginally and* bona fide *due and owing to the said defendant, nor was the said sum of six hundred and thirty pounds, if the same had been due to the said defendant, in danger of being lost, unless a more speedy course than the usual way of proceeding should be forthwith taken to recover the same as the said defendant suggested and represented in form aforesaid; and whereas in truth and in fact the said defendant was not entitled to the prerogative process of his majesty's court of exchequer by writ or writs of extent against the said plaintiff, to arrest the body, and seize and enter the lands, tenements, goods, and chattels of the said plaintiff in satisfaction of the said sum of six hundred and thirty*

thirty pounds, or any part thereof; by means of which ſaid malicious ſuing out and proſecuting of the ſaid laſt-mentioned writ of extent againſt the ſaid plaintiff, and the proceedings had thereon before the ſame could be ſuperſeded as aforeſaid, the ſaid plaintiff ſuffered a long and grievous impriſonment, and loſt the uſe, enjoyment, benefit, and advantage of his lands and tenements, goods, and chattels, and of the debts, credits, ſum and ſums of money due and owing to the ſaid plaintiff, and was diſabled and prevented from getting and recovering divers debts, credits, ſum and ſums of money due and owing to the ſaid plaintiff, to enable him the ſaid plaintiff to diſcharge the debts due and owing from the ſaid plaintiff to his creditors, and to ſupply his other neceſſary uſes and occaſions, and the ſaid plaintiff hath loſt his credit and reputation among his friends and neighbours, and other the king's ſubjects, and particularly with A. B. C. and D. &c. &c. to whom reſpectively the ſaid plaintiff was then indebted in divers large ſums of money, inſomuch that they, by reaſon of the ſaid malicious proſecution againſt the ſaid plaintiff, and for no other cauſe whatſoever, reſpectively refuſed to give any longer credit to the ſaid plaintiff for the payment of their reſpective debts which they otherwiſe would have done; and the ſaid A. B. C. and D. for the recovery of the debts due to them from the ſaid plaintiff, afterwards, to wit, on, &c. at, &c. cauſed the ſaid plaintiff to be taken by the ſaid ſheriff, and to be detained under his cuſtody by virtue of a bill of Middleſex returnable before the lord the king at Weſtminſter, on, &c. to anſwer to the ſaid A. B. C. and D. in a plea, &c. and alſo the ſaid E. F. &c. for the recovery of the debt due to them from the ſaid plaintiff, hath cauſed the ſaid plaintiff to be detained in the cuſtody of the ſaid ſheriff by virtue of a writ of ſpecial *capias* returnable before the lord the king, on, &c. to anſwer the ſaid E. F. &c. in a plea of treſpaſs on the caſe, to the damage of the ſaid E. F. &c. of ten pounds [there were other writs of detainer againſt the plaintiff at the ſuit of other creditors, ſet out the ſame]; and the ſaid L. M. for the recovery of the debt due and owing to him from the ſaid plaintiff, cauſed divers goods and chattels of the ſaid plaintiff to be taken in execution by the ſaid ſheriff, by virtue of a writ of *fieri facias* iſſued out of the court of our lord the king before the king himſelf, at the ſuit of the ſaid L. M. againſt the ſaid plaintiff for one thouſand nine hundred pounds debt and ſixty-three ſhillings damages, returnable before the lord the king at Weſtminſter on, &c.; and the ſaid plaintiff, by means of the premiſes, hath been compelled to pay to divers others of his creditors divers other ſums of money due to them reſpectively from the ſaid plaintiff, ſooner than they would otherwiſe ſeverally have required the ſame; and the ſaid plaintiff, by reaſon of the premiſes, is not only greatly hurt in his good name, credit, and reputation as aforeſaid, but by reaſon of his being ſo arreſted, detained, and proceeded againſt by his creditors as aforeſaid, hath ſuſtained and ſuffered a grievous impriſonment, and hath been put to great trouble, coſts, and charges, and is thereby

brought to ruin: And alſo, that he the ſaid defendant wickedly, &c. contriving, &c. [finiſhes this Count ſame as the firſt, only omitting what is in Italic, and inſerting what is in the margin].

Count, ſtates the extent out againſt plaintiff.

Plea, general iſſue. G. WOOD.

N. B. There were two writs of extent ſued out of the exchequer by the defendant, one againſt A. B. the payee of a note, and the other againſt defendant, the ſuppoſed drawer of the note.

The plaintiff laid his damages at ten thouſand pounds, but recovered a verdict with only thirty pounds.

Trinity Term, 28. Geo. III.

Declaration for maliciouſly arreſting and holding plaintiff to bail for eleven pounds and upwards, where nothing was due from him to defendant, who diſcontinued the ſuit.

MIDDLESEX, to wit. John Tye complains of Benjamin Harris being, &c.; for that whereas by the laws of this realm no perſon ought to be arreſted or attached by his or her body, at the ſuit of any other perſon in any action or ſuit by proceſs out any of the ſuperior courts of this realm, unleſs ſuch perſon, at whoſe ſuit ſuch proceſs be ſued out, have a cauſe of action againſt ſuch perſon ſo arreſted, to the amount of ten pounds or upwards; nevertheleſs the ſaid Benjamin, well knowing the premiſes, but contriving and maliciouſly intending unjuſtly to moleſt, oppreſs, injure, and diſquiet the ſaid John, and to cauſe him to be arreſted and impriſoned, and to lay out and expend a large ſum of money, and to compel and oblige the ſaid John to procure his friends to become ſurety or bail for him the ſaid John, he the ſaid Benjamin not having any cauſe of action againſt the ſaid John to the amount of ten pounds, or of any other ſum of money whatſoever heretofore, that is to ſay, in the vacation of the term of St. Hilary, in the twenty-ſeventh year of the reign of, &c. maliciouſly and injuriouſly proſecuted out of the court of our ſaid lord the king, before the king himſelf (the ſaid court then and ſtill being at Weſtminſter, in the ſaid county of Middleſex) a certain precept of our ſaid lord the king called a bill of Middleſex; by which ſaid precept the ſaid lord the king commanded the ſheriff to take the ſaid John if he ſhould be found in his bailiwick, and him ſafely keep, ſo that he might have his body before the ſaid lord the king at Weſtminſter on, &c. to anſwer to the ſaid Benjamin in a plea of treſpaſs, and alſo to a bill of the ſaid Benjamin againſt the ſaid John for forty pounds upon promiſes, according to the cuſtom of the ſaid court of our ſaid lord the king, before the king himſelf to be exhibited, and that he ſhould have there then that precept; which ſaid precept he the ſaid Benjamin maliciouſly and injuriouſly intending as aforeſaid, then and there, without any reaſonable or probable cauſe, marked and indorſed, and cauſed and procured to be marked and indorſed for bail for ten pounds and upwards, by virtue of an affidavit made by the ſaid Benjamin, and duly affiled according to the form of the ſtatute in ſuch caſe made and provided; by reaſon whereof, the ſaid Benjamin afterwards, and before the return of the ſaid writ, to wit, on, &c. at, &c. cauſed and procured the ſaid John to be arreſted and impriſoned, and him the ſaid John ſo arreſted

reſted and impriſoned at the ſuit of the ſaid Benjamin, by the means and for the cauſe aforeſaid, cauſed to be kept and detained in priſon for a long ſpace of time, to wit, for the ſpace of one day then next following, and until the ſaid John for his enlargement and diſcharge from the ſaid impriſonment, afterwards, to wit, on, &c. at, &c. was obliged to find good and ſufficient bail for his appearance before our ſaid lord the king at Weſtminſter at the return of the ſaid precept, to anſwer to the ſaid Benjamin in the plea aforeſaid, according to the exigency thereof, whereas in truth and in fact the ſaid John, at the time of the proſecuting the ſaid precept, or at any time before or afterwards, was not indebted to the ſaid Benjamin in the ſum of ten pounds, or in any other ſum of money whatſoever, for which the ſaid John, by the laws of this realm, ought to have been arreſted by his body, or ought to have been obliged to find bail for his appearance at the return of the ſaid precept, to anſwer to the ſaid Benjamin, or in default thereof to be detained in priſon, nor had the ſaid Benjamin, at the time of the ſuing out the ſaid precept, or at the time of the arreſt aforeſaid, or at any time afterwards, any juſt or probable cauſe or pretence for arreſting and impriſoning the ſaid John as aforeſaid, to wit, at, &c.. And the ſaid John further ſays, that the ſaid Benjamin afterwards, to wit, in Eaſter term, in the twenty-ſeventh year aforeſaid, in the ſaid court of our lord the king, before the king himſelf at Weſtminſter aforeſaid, exhibited his bill againſt the ſaid John upon the appearance of the ſaid John, according to the exigency of the aforeſaid precept, in a certain plea of treſpaſs upon the caſe upon promiſes, and ſuch proceedings were thereupon had in the ſame court of our ſaid lord the king, before the king himſelf at Weſtminſter aforeſaid, that afterwards, to wit, in the term of St. Hilary then next following, he the ſaid Benjamin did not proſecute his bill aforeſaid againſt the ſaid John with effect, but permitted his ſuit aforeſaid to be diſcontinued for want of proſecution, which ſaid action or ſuit is now wholly ended and determined, to wit, at, &c., by reaſon and means of all which ſaid premiſes, the ſaid John hath not only been put to great charges and expences, and been forced and obliged to lay out and expend, and hath actually laid out and expended a large ſum of money, to wit, the ſum of thirty pounds of lawful, &c. in and about the diſcharging himſelf from his ſaid impriſonment, and in and about his defence in the premiſes, but hath been alſo compelled and obliged to ſuffer and undergo many grievous pains both of body and mind during his ſaid impriſonment, and was, during all that time of his ſaid impriſonment, prevented and hindered from doing and tranſacting his lawful affairs and buſineſs, and hath been in other reſpects, by reaſon and means of the premiſes aforeſaid, greatly injured, troubled, and damnified, to wit, at, &c. to the damage of the ſaid John of four hundred pounds, and therefore he brings ſuit, &c. V. LAWES.

MIDDLESEX,

...ration for ...iciously ſu... ...duct an exe... ...ion upon a ...gment enter... ...up by a war... ...of attorney ... for that ...fore of ſure ...payment of ...m of money ...inſtalments, ...the firſt in... ...ment was ..., and before ...ſecond be ...due, with ...ſpecial *per*

MIDDLESEX, to wit. Edward Baker complains of Samuel Mercer being, &c, for that whereas before the committing of the grievance hereafter next mentioned, to wit, on the twenty-fourth of November A D. 1788. at Weſtminſter, in the county of Middleſex, the ſaid F had made and ſealed, and as his act and deed delivered to the ſaid Samuel a certain writing-obligatory, and had thereby acknowledged himſelf to be held and firmly bound to the ſaid Samuel in the ſum of four hundred pounds of good and lawful, &c. to be paid to the ſaid Samuel or his certain attorney, his executors, adminiſtrators, or aſſigns, for which payment, well and truly to be made, the ſaid F. then and there bound himſelf, his heirs, executors, and adminiſtrators firmly by the ſaid writing obligatory, ſubject nevertheleſs to a certain condition thereunder written, for the making void the ſaid writing-obligatory on payment of the ſum of two hundred pounds of good and lawful, &c. with lawful intereſt for the ſame, by the ſaid E his heirs, executors, or adminiſtrators, unto the ſaid Samuel, his executors, adminiſtrators, or aſſigns, on the ſeveral and reſpective days and times, and in manner following, that is to ſay, the ſum of ſixteen pounds thirteen ſhillings and fourpence of like good and lawful money, part thereof, with like lawful intereſt for the ſaid ſum of two hundred pounds on the twenty-fourth of February, which would be A. D. 1789, the further ſum of ſixteen pounds thirteen ſhillings and fourpence of like good and lawful money, other part of the ſaid ſum of two hundred pounds, with lawful intereſt for the ſum of one hundred and eighty-three pounds ſix ſhillings and eightpence on the twenty-fourth of May, in the ſaid year of Our Lord 1789, the further ſum of ſixteen pounds thirteen ſhillings and fourpence of like, &c. other part of the ſaid ſum of two hundred pounds, with lawful intereſt for the ſum of one hundred and ſixty-ſix pounds thirteen ſhillings and fourpence, on the twenty-fourth of Auguſt, in the ſaid A. D. 1789, the further ſum of ſixteen pounds thirteen ſhillings and fourpence of like, &c. other part of the ſum of two hundred pounds, with lawful intereſt for the ſum of one hundred and fifty pounds, on the twenty-fourth of November, in the ſaid A. D. 1789, the further ſum of ſixteen pounds thirteen ſhillings and fourpence of like good and lawful money, other part of the ſaid ſum of two hundred pounds, with lawful intereſt for the ſum of one hundred and thirty-three pounds ſix ſhillings and eightpence, on the twenty-fourth of February, which would be A.D. 1790, the further ſum of ſixteen pounds thirteen ſhillings and fourpence of like, &c. other part of the ſaid ſum of two hundred pounds, with lawful intereſt for the ſum of one hundred and ſixteen pounds thirteen ſhillings and fourpence, on the twenty-fourth of May, in the ſaid year of Our Lord 1790, the further ſum of ſixteen pounds thirteen ſhillings and fourpence of like, &c. other part of the ſaid ſum of two hundred pounds, with lawful intereſt for the ſum of one hundred pounds, on the twenty-fourth of Auguſt, in the ſaid A. D. 1790, the further ſum of ſixteen pounds thirteen ſhillings and fourpence of like, &c. other part

of the ſaid ſum of two hundred pounds, with lawful intereſt for the ſum of eighty-three pounds ſix ſhillings and eightpence, on the twenty-fourth of November, in the ſaid A. D. 1790; the further ſum of ſixteen pounds thirteen ſhillings and fourpence of like, &c. other part of the ſaid ſum of two hundred pounds, with lawful intereſt for the ſum of ſixty-ſix pounds thirteen ſhillings and fourpence, on the twenty-fourth of February which would be A. D. 1791, the further ſum of ſixteen pounds thirteen ſhillings and fourpence of like, &c. other part of the ſaid ſum of two hundred pounds, with lawful intereſt for the ſum of fifty pounds, on the twenty-fourth of May, in the ſaid year of Our Lord 1791, the further ſum of ſixteen pounds thirteen ſhillings and fourpence of like, &c. other part of the ſaid ſum of two hundred pounds, with lawful intereſt for the ſum of thirty-three pounds ſix ſhillings and eightpence, on the twenty-fourth of Auguſt, in the ſaid A. D. 1791, and the further ſum of ſixteen pounds thirteen ſhillings and fourpence of like, &c. reſidue of the ſaid ſum of two hundred pounds, with lawful intereſt for the ſaid laſt-mentioned ſum of ſixteen pounds thirteen ſhillings and fourpence, on the twenty-fourth of November, in the ſaid A. D. 1791; and as a further ſecurity for the payment of the ſaid ſum of two hundred pounds, and intereſt on the ſeveral and reſpective days, and in manner aforeſaid, the ſaid E. before the committing of the grievance hereafter mentioned, to wit, *on the ſaid twenty-fourth of November A. D.* 1788 aforeſaid, at Weſtminſter, in the county of Middleſex aforeſaid, made and executed a certain warrant of attorney directed to William Hale, William Wilbraham, and James Duncan, attornies of his majeſty's court of King's Bench at Weſtminſter jointly and ſeverally, or to any other attorney of the ſame court, thereby deſiring and authorizing them the ſaid attornies, or any one of them, or any other attorney of the court of King's Bench aforeſaid, to appear for him the ſaid E. as of the then preſent Michaelmas term, or any ſubſequent term, and then and there to receive a declaration for him in an action of debt for four hundred pounds, being money borrowed at the ſuit of the ſaid Samuel, and thereupon to confeſs the ſame action, or elſe to ſuffer a judgment by *non ſum informatus* or otherwiſe to paſs againſt him in the ſame action, and to be thereupon forthwith entered up againſt him upon record of the ſaid court for the ſum of four hundred pounds, and all coſts of ſuit and otherwiſe howſoever; and by a certain memorandum thereunder written, it was declared, that the ſaid warrant of attorney was intended to refer to a bond bearing equal date therewith, meaning the ſaid bond or writing obligatory hereinbefore mentioned, and it was mutually agreed between the parties therein mentioned, that no execution ſhould iſſue thereon, unleſs failure ſhould be made in the performance of the ſaid bond and the condition thereof: And whereas after the making of the ſaid writing-obligatory in the ſaid condition thereunder written, and of the ſaid writing of attorney, with the ſaid memorandum thereunder written as aforeſaid, and before the committing of the grievance

Warrant of attorney.

ance hereafter next mentioned, in purſuance of the ſaid writing of attorney a judgment was entered up of record as of Michaelmas term, in the twenty ninth year of the reign of our ſaid lord the now king, in the court of our ſaid lord the now king, before the king himſelf at Weſtminſter, at the ſuit of the ſaid Samuel againſt the ſaid F. whereby it was conſidered by the ſame court that the ſaid Samuel ſhould recover againſt the ſaid Edward his debt, and alſo ſixty-three pounds for his damages which he had ſuſtained, aſd as well by occaſion of the detaining the ſaid debt as for his coſts and charges by him about his ſuit in that behalf expended: And whereas before the committing of the grievance hereinafter next mentioned, to wit, on the *twenty-fourth of February* A. D. 1789, at Weſtminſter, in the county of Middleſex aforeſaid, a certain ſum of money, to wit, the ſum of ſixteen pounds thirteen ſhillings and fourpence of lawful money, &c. with lawful intereſt for the ſaid ſum of two hundred pounds, amounting to a certain ſum of money, to wit, the ſum of two pounds ten ſhillings of like lawful, &c. and making together with the ſaid ſum of ſixteen pounds thirteen ſhillings and fourpence, the ſum of nineteen pounds three ſhillings and fourpence of like, &c. became and was due and payable from the ſaid E. to the ſaid Samuel upon the ſaid writing-obligatory, by the condition thereof, and which ſaid ſum of nineteen pounds three ſhillings and fourpence, before the committing of the grievance hereafter next mentioned, had been and was paid and ſatisfied by the ſaid Edward to the ſaid Samuel, to wit, at Weſtminſter, in the county of Middleſex aforeſaid; yet the ſaid Samuel, well knowing all and ſingular the premiſes, but contriving and wickedly and maliciouſly intending to injure, prejudice, and aggrieve the ſaid E. and to cauſe his goods and chattels to be wrongfully and injuriouſly ſeized and taken in execution for a large ſum of money, under colour and pretence of the ſaid judgment, and thereby not only to deprive the ſaid Edward of the uſe and benefit thereof, but to bring him into great diſgrace, diſcredit, and diſrepute amongſt his neighbours and other the king's faithful ſubjects, and to injure and damnify the ſaid E. in his trade and buſineſs of a butcher, and to put him to great charges and expences of his monies, and to haraſs, oppreſs, impoveriſh, and wholly ruin him the ſaid E. heretofore, and after the payment of the ſaid ſum of nineteen pounds three ſhillings and fourpence by the ſaid E. to the ſaid Samuel as aforeſaid, and before any further ſum of money became due or payable from the ſaid E. to the ſaid Samuel upon the ſaid writing-obligatory by the condition thereof, to wit, *on the eighteenth of April, in the twenty-ninth year of the reign of our lord the now king* at Weſtminſter aforeſaid, in the county aforeſaid, the ſaid Samuel wrongfully, unjuſtly, and maliciouſly, and without any reaſonable or probable cauſe whatſoever, ſued and proſecuted, and cauſed and procured to be ſued and proſecuted out of the ſaid court of our ſaid lord the king, before the king himſelf here, to wit, at Weſtminſter, in the county of Middleſex aforeſaid, a certain writ of our ſaid lord the king called a

fieri facias, upon and under colour and pretence of the ſaid judgment, *directed to the ſheriff of Middleſex*; by which ſaid writ our ſaid lord the king commanded the ſaid ſheriff that he ſhould cauſe to be levied of the goods and chattels in the bailiwick of the ſaid ſheriff of the ſaid E. his debt and damages aforeſaid in form aforeſaid recovered, and that the ſaid ſheriff ſhould have that money before our ſaid lord the king at Weſtminſter, on Wedneſday next after fifteen days from the day of Eaſter, to render to the ſaid Samuel for the debt and damages aforeſaid, and that the ſaid ſheriff ſhould have there that writ; which ſaid writ the ſaid Samuel afterwards and before the ſaid return thereof, to wit, on the eighteenth of April, in the year laſt aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, wrongfully, unjuſtly, and maliciouſly, and without any reaſonable or probable cauſe whatſoever, cauſed and procured to be indorſed for the ſaid ſheriff to levy two hundred and fifteen pounds fourteen ſhillings and ſixpence, beſides the ſheriff's poundage, officer's fees, and all other expences, and which ſaid writ ſo indorſed as aforeſaid, he the ſaid Samuel afterwards, and before the ſaid return thereof, to wit, on the ſame day and year laſt aforeſaid, at Weſtminſter, in the county aforeſaid, wrongfully, unjuſtly, and maliciouſly, and without any reaſonable or probable cauſe whatſoever, cauſed and procured to be delivered to William Curtis, eſquire, and ſir B. Hammet, knight, who then and from thenceforth hitherto, until, and at and after the return of the ſaid laſt-mentioned writ, were ſheriffs of Middleſex aforeſaid, to be executed in due form of law, required the ſaid ſheriff to execute the ſame; by virtue of which ſaid writ the ſaid W. C. and ſir B. H. ſo being ſheriffs of Middleſex as aforeſaid, afterwards and before the ſaid return thereof, to wit, on the ſame day and year laſt aforeſaid, and whereupon the bailiwick of the ſaid ſheriff, as ſuch ſheriff, at the inſtance and requeſt of the ſaid Samuel, entered a certain meſſuage or dwelling-houſe of the ſaid Edward, ſituate and being in the pariſh of St. James's, in the liberty of Weſtminſter, in the county of Middleſex aforeſaid, and then and there made a great noiſe and diſturbance therein; and ſtaid and continued in the ſaid meſſuage or dwelling-houſe, making ſuch noiſe and diſturbance therein for a long ſpace of time, to wit, for the ſpace of ten days then next following, and thereby for and during all that time greatly diſturbed and diſquieted the ſaid E. and his family in the peaceable and quiet poſſeſſion, uſe, occupation, and enjoyment of the ſaid meſſuage or dwelling-houſe, and then and there, at the like inſtance and requeſt of the ſaid Samuel, ſeized and took in execution the goods and chattels (as by the inventory, enumerating all the articles ſeized) of the ſaid E. of a large value, to wit, of the value of three hundred pounds, then found and being in the ſaid meſſuage or dwelling-houſe, and kept and detained the ſaid goods and chattels for a long ſpace of time, to wit, for the ſpace of ten days, whereby the ſaid E. for and during all that time, there loſt and was deprived of the uſe and benefit of his ſaid goods and chattels, and by means of the ſeveral premiſes aforeſaid he the

ſaid

ſaid E. was not only put to great trouble and anxiety of mind, and was forced and obliged to and did neceſſarily lay out and expend a large ſum of money, to wit, the ſum of fifty pounds of lawful, &c. in and about the ſtaying of all further proceedings on the ſaid writ of *fieri facias*, and regaining the poſſeſſion of his ſaid meſſuage or dwelling-houſe, and of his ſaid goods and chattels ſo ſeized and taken in execution under and by virtue of the ſaid writ as aforeſaid, but alſo that he the ſaid L. was and is greatly injured in his ſaid trade and buſineſs aforeſaid, inſomuch that by means thereof, and on no other account whatſoever, divers and very many perſons, and particularly William Trinder, Henry Lloyd, Charles Page, George Padget, and Edward Gurney, with whom the ſaid Edward was before then uſed and accuſtomed to deal on credit, and who would otherwiſe have given credit to the ſaid E. in his aforeſaid trade and buſineſs, wholly refuſed and neglected, and declined to give him any further credit there, and the ſaid E. by means of the premiſes, hath been compelled to pay to divers of his creditors, and particularly to Henry Lloyd, Richard Geering, John H. William H. and R. B. divers large ſums of money due to them reſpectively from the ſaid E. much ſooner than they would otherwiſe ſeverally require the ſame, and hath and is otherwiſe greatly injured and damnified, very much impoveriſhed, and almoſt wholly ruined, to wit, at Weſtminſter, in the county of Middleſex: And whereas the ſaid S. before the committing of the grievances hereafter next mentioned, to wit, in Michaelmas term, in the twenty-ninth year of the reign of our lord the now king, in the court of our ſaid lord the now king before the king himſelf here, (the ſaid court then and ſtill being holden at Weſtminſter aforeſaid, in the county of Middleſex aforeſaid) by the conſideration and judgment of the ſame court recovered againſt the ſaid E. as well a certain debt of four hundred pounds as alſo ſixty-three pounds for his damages which he had ſuſtained as well by occaſion of the detaining the ſaid debt, as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid E. was convicted, as by the record and proceedings thereof ſtill remaining in the ſaid court of our ſaid lord the king, before the king himſelf here, to wit, at Weſtminſter aforeſaid, in the county aforeſaid, more fully appears And whereas the ſaid judgment had been entered up by the mutual conſent of the ſaid S. and E. for ſecuring the payment by the ſaid E. to the ſaid S. of a certain leſſer ſum of money, with intereſt by certain inſtalments at certain times; to wit, at Weſtminſter aforeſaid, in the county aforeſaid: And whereas at the time of committing the grievance hereafter next mentioned, the firſt inſtalment of the ſaid leſſer ſum had been paid and ſatisfied, and no other inſtalment thereof had become due, and the ſaid E. was not indebted to the ſaid S. upon or by virtue of the ſaid laſt-mentioned judgment, in any ſum of money for which the ſaid Samuel, by the laws of this realm, or the practice of the ſaid court of our ſaid lord the king, before the king himſelf, could or ought to have ſued out or

Plaint, on judgment up for inſtalment

obtained

obtained execution againſt the ſaid E. or his goods and chattels in any way howſoever; yet the ſaid S. well knowing all and ſingular the premiſes laſt aforeſaid, but contriving and wickedly and maliciouſly intending to injure, prejudice, and aggrieve the ſaid F. and to cauſe his goods and chattels to be wrongfully and injuriouſly ſeized and taken in execution for a large ſum of money, under colour and pretence of the ſaid laſt mentioned judgment, and thereby not only to deprive the ſaid E. of the uſe and benefit thereof, but to bring him into great diſgrace, diſcredit, and diſrepute among his neighbours and other the king's faithful ſubjects, to injure and damnify the ſaid E. in his aforeſaid trade and buſineſs of a butcher, to put him to great charges and expences of his monies, to vex, haraſs, oppreſs, impoveriſh, and wholly ruin him the ſaid Edward heretofore, to wit, on the *eighteenth of April*, in the twenty-ninth year of the reign of our ſaid lord the now king, at Weſtminſter aforeſaid, in the county aforeſaid, wrongfully, unjuſtly, and maliciouſly, and without any reaſonable or probable cauſe whatſoever, ſued and proſecuted, and cauſed and procured to be ſued and proſecuted out of the ſaid court of our ſaid lord the king, before the king himſelf here, to wit, at Weſtminſter, in the county of Middleſex aforeſaid, a certain writ of our ſaid lord the king, commonly called a *fieri facias*, under colour and pretence of the ſaid laſt mentioned judgment, directed to the ſheriff of Middleſex, by which ſaid laſt-mentioned writ our ſaid lord the king commanded the ſaid ſheriff that he ſhould cauſe to be levied of the goods and chattels in the bailiwick of the ſaid ſheriff of the ſaid E. his debt and damages laſt aforeſaid, in form aforeſaid recovered, and that the ſaid ſheriff ſhould have that money before our ſaid lord the king at Weſtminſter on Wedneſday next after fifteen days from the day of Eaſter, to render to the ſaid Samuel for the debt and damages aforeſaid, and that the ſaid ſheriff ſhould have there that writ, which ſaid laſt-mentioned writ he the ſaid S. afterwards, and before the return thereof, to wit, on the eighteenth of April, in the year laſt aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, wrongfully, unjuſtly, and maliciouſly, and without any reaſonable or probable cauſe whatſoever, cauſed and procured to be delivered to the ſaid W. C. eſquire, and ſir B H knight, who then and from thenceforth until and at and after the return of the ſaid laſt-mentioned writ, was ſheriff of Middleſex aforeſaid, to be executed in due form of law; by virtue of which ſaid laſt mentioned writ the ſaid W. C. and ſir B. H. ſo being ſheriff of Middleſex as aforeſaid, afterwards and before the return thereof, to wit, on the ſame day and year laſt aforeſaid, and within the bailiwick of the ſaid ſheriff, as ſuch ſheriff, at the inſtance and requeſt of the ſaid S entered the ſaid meſſuage or dwelling-houſe of the ſaid E. ſituate as aforeſaid, and then and there made a great noiſe and diſturbance therein, and ſtaid and continued in the ſaid meſſuage or dwelling-houſe, making ſuch noiſe and diſturbance therein for a long ſpace of time, to wit, for the ſpace of ten days then next following, and thereby,

thereby, for and during all that time there greatly diſturbed and diſquieted the ſaid Edward and his family in the peaceable and quiet poſſeſſion, uſe, occupation, and enjoyment of his ſaid meſſuage or dwelling-houſe, and then and there, at the like inſtance and requeſt of the ſaid Samuel, ſeized and took in execution the goods and chattels [as before by inventory] of the ſaid Edward of a large value, to wit, of the value of three hundred pounds, and there found and being in the ſaid meſſuage or dwelling-houſe, and kept and detained the ſaid laſt-mentioned goods and chattels for a long ſpace of time, to wit, for the ſpace of ten days, whereby the ſaid E. for and during all that time there loſt and was deprived of the uſe and benefit of his ſaid laſt-mentioned goods and chattels, by means of the ſeveral premiſes laſt aforeſaid, he the ſaid E. was not only put to great trouble and anxiety of mind, and was forced and obliged and did neceſſarily lay out and expend a large ſum of money, to wit, the ſum of fifty pounds of lawful, &c. in and after the ſtaying of all further proceedings on the ſaid laſt-mentioned writ of *fieri facias*, and regaining the poſſeſſion of his ſaid meſſuage or dwelling-houſe, and of the ſaid laſt-mentioned goods and chattels ſo ſeized and taken in execution under and by virtue of the ſaid laſt-mentioned writ as aforeſaid, but alſo thereby he the ſaid E. was and is greatly injured in his trade and buſineſs aforeſaid, inſomuch that by means whereof, and on no other account whatſoever, divers and very many perſons, and particularly William T. H. L. Charles P. G. P. and E. G. with whom the ſaid Edward was before then uſed and accuſtomed to deal on credit, and who would otherwiſe have given credit to the ſaid Edward in his aforeſaid trade and buſineſs, wholly refuſed, neglected, and declined to give him any further credit therein; and the ſaid Edward, by means of the premiſes laſt aforeſaid, hath been compelled to pay to divers of his creditors, and particularly to H. L. R. G. J. H. W. F. and R. B. divers large ſums of money due to them reſpectively from the ſaid E. much ſooner than they would otherwiſe ſeverally have required the ſame, and hath been and is otherwiſe greatly injured and damnified in his aforeſaid trade and buſineſs, very much impoveriſhed, and almoſt wholly ruined, to wit, at Weſtminſter, in the county of Middleſex aforeſaid; to the damage of the ſaid E. of one thouſand pounds; and therefore, &c. Pledges, &c.

G. Wood.

Trover for maliciouſly holding to bail and falſe imprisonment, by procuring a detainer againſt plaintiff when in cuſtody at the ſuit of defendant, whereby thoſe who would have bailed him refuſed.

LONDON, to wit. Richard Selby complains of William Marchant, Charles Rymer, and Leaver Legge, being in the cuſtody, &c.; for that whereas before the grievance hereinafter next mentioned, the ſaid Richard being a merchant and trading as ſuch to and from the iſland of Madeira, had purchaſed divers goods and merchandizes of one Henry Jordan to a large amount, to wit, to the amount of ſeventy-eight pounds of lawful money of Great Britain, on the terms of paying for the ſame in Madeira wines, to be remitted by the ſaid Richard to London on the account and riſk

riſk of the ſaid Henry Jordan; and the ſaid Richard, before the committing of the ſaid grievance, had accordingly remitted to the ſaid H. Jordan certain Madeira wines to a large amount, to wit, to the amount of ſeventy pounds, in part diſcharge of his ſaid demand, and the ſaid W. C. and L. well knowing the premiſes, and claiming to be entitled to the wines ſo remitted to the ſaid H. Jordan as aſſignees of his eſtate and effects by force of the ſtatute now in force concerning bankrupts, had, before the committing of the ſaid grievance, poſſeſſed themſelves of the ſaid wines, to wit, at London aforeſaid, in the pariſh of St. Mary le Bow, in the ward of Cheap, yet the ſaid defendants, maliciouſly deviſing and intending to oppreſs and injure the ſaid Richard, and without any reaſonable or probable cauſe whatſoever to cauſe and procure him to be impriſoned and detained in priſon, and to prevent the friends and acquaintance of the ſaid Richard from becoming bail for him, and to put him to great trouble, inconvenience, and expence, and to ruin his credit and reputation as a merchant, and heretofore, to wit, on the third of November, A. D. 1788, wrongfully, maliciouſly, and without any reaſonable or probable cauſe whatſoever, cauſed to be ſued and proſecuted out of the court of the ſaid lord the king, before the king himſelf at Weſtminſter, in the county of Middleſex, a certain writ of the ſaid lord the king called a *ſpecial capias ad reſpondendum*, againſt the ſaid Richard (by the name and addition of Richard S. late of Weſtminſter, in the county of Middleſex, merchant), directed to the ſheriff of Middleſex, whereby the ſaid lord the king commanded the ſaid ſheriff, that he ſhould take the ſaid Richard, if he ſhould be found in his bailiwick, and ſafely keep him, ſo that he might have his body before the ſaid lord the king on a certain day in the ſaid writ mentioned, wheresoever the ſaid lord the king ſhould then be in England, to anſwer to the ſaid W. C. and L. as ſuch aſſignees as aforeſaid, in a plea of treſpaſs upon the caſe upon certain ſuppoſed promiſes and undertakings in the ſaid writ ſpecified, to the damage of the ſaid W. C. and L. as ſuch aſſignees, of one hundred and thirty pounds as it was ſaid, and that he ſhould have there that writ, which ſaid W. C. and L. afterwards, and before the return thereof, to wit, on the day and year firſt above-mentioned, at L. &c. aforeſaid, wrongfully, maliciouſly, and without any reaſonable or probable cauſe whatſoever, and with the intent aforeſaid, cauſed to be inſtituted for bail for ninety-two pounds and upwards, by virtue of an affidavit of the ſuppoſed cauſe of ſuch action or ſuit before them made and affiled in the ſaid court, and to be delivered to indorſed to the then ſheriff of Middleſex to be executed; and the ſaid W. C. and L. afterwards, to wit, on the day and year laſt aforeſaid, wrongfully and maliciouſly, and without any reaſonable or probable cauſe whatſoever, and by virtue of the ſaid writ, cauſed the ſaid Richard, then being in the cuſtody of the ſaid ſheriff, to wit, at Weſtminſter aforeſaid, under a certain other bailable proceſs againſt him at the ſuit of Thomas Smith, John Wright, and Henry Gray, directed to the ſame ſheriff, to be detained in his cuſ-

tody at the ſuit of them the ſaid William, Charles, and Leaver, by means and in conſequence of which ſaid detainer one William Ludlam, and one Bourke, of London, merchants, who then were willing to have become, and would have then and there become bail to the ſaid ſheriff for the appearance of the ſaid R chard at the return of the before-mentioned proceſs at the ſuit of Thomas Smith, John Wright, and Henry Gray, in caſe no writ had been iſſued againſt him at the ſuit of the ſaid William, Charles, and L. wholly refuſed to become ſuch bail, by reaſon of which ſaid ſeveral premiſes the ſaid Richard was obliged to remain and continue in the cuſtody of the ſaid ſheriff for want of bail to the ſaid ſeveral actions for a long ſpace of time until he afterwards, to wit, on the twelfth of November, in the year aforeſaid, by virtue of his majeſty's writ of *habeas corpus cum cauſa*, before then ſued and proſecuted out of the ſaid court, directed to the ſaid ſheriff, was in obedience to the ſaid laſt-mentioned writ, brought before the right honourable Lloyd lord Kenyon, then and ſtill being chief juſtice of the ſaid court, at his chambers in Serjeant's Inn, Chancery lane, London, and was thereupon committed by the ſaid chief juſtice to the cuſtody of the marſhal of the Marſhalſea of the ſaid Lord the king, before the king himſelf, charged with the before-mentioned actions reſpectively, and the ſaid Richard was afterwards kept and detained in the cuſtody of the ſaid marſhal by virtue of the ſaid commitment for a further and longer ſpace of time, and until he afterwards, to wit, on the twenty eighth of November, in the year aforeſaid, in order to diſcharge himſelf from the ſaid ſo mentioned cuſtody, found good and ſufficient bail to the ſaid reſpective actions, according to the courſe and practice of the ſaid court, as by the ſaid writ of *habeas corpus*, and commitment thereupon, and the recognizance of the ſaid bail now remaining in the ſame court, at Weſtminſter aforeſaid, more fully appears, whereas in truth and in fact, the ſaid Richard was not at the time of the ſuing out of the ſaid writ at the ſuit of the ſaid William, Charles, and L. againſt the ſaid Richard, or at the time of his detention and impriſonment by virtue thereof, indebted to the ſaid William, Charles, and L. as ſuch aſſignees aforeſaid, or otherwiſe, in the ſum of ninety-two pounds, nor had they at either of thoſe times any juſt, reaſonable, or probable cauſe of action or ſuit whatſoever againſt the ſaid Richard for which he ought to have been arreſted or impriſoned, or for which he was compellable to find bail. And the ſaid Richard ſays, that the ſaid William, Charles, and L. afterwards, to wit, in Eaſter term now laſt paſt in the ſaid court of our lord the now king, before the king himſelf, became nonſuit in their ſaid action or ſuit againſt the ſaid Richard, as by the record of the judgment of nonſuit in that behalf now remaining in the ſaid court at Weſtminſter aforeſaid, more fully appears, and the ſaid action or ſuit of the ſaid William, Charles, and L. is now wholly ended and determined, to wit, at L. &c. aforeſaid. And the ſaid Richard further ſays, that he by reaſon of the grievance ſo committed by the ſaid William, Charles, and L. as aforeſaid,

aforeſaid, hath been greatly oppreſſed and injured, and put to great trouble, inconvenience, and expence, and his credit and reputation as a merchant hath been and is thereby greatly diminiſhed, inſomuch that divers perſons, who before the time of his being ſo detained in cuſtody at the ſuit of the ſaid William, Charles, and L. were in the habit of trading and dealing with the ſaid Richard, have from thence hitherto refuſed to have any further dealings with him, and particularly one Hugh O'Connor, who was about to have contracted with the ſaid Richard for the ſale of certain merchandizes for exportation by the ſaid Richard to the ſaid iſland of Madeira, to a large amount, has, in conſequence of ſuch detention of the ſaid Richard in cuſtody as aforeſaid, wholly refuſed to deal with him, and the ſaid William has thereby loſt and been deprived of ſundry great gains and profits which he would otherwiſe have made and acquired to himſelf, to wit, at L. &c. aforeſaid: And the ſaid Richard further complains, that the ſaid defendants, maliciouſly deviſing and intending to oppreſs and injure the ſaid Richard, and to put him to great trouble, inconvenience, and expence, heretofore, to wit, on the ſaid third of November, in the year aforeſaid, at L. &c. aforeſaid, wrongfully, maliciouſly, and without any reaſonable or probable cauſe whatſoever, cauſed and procured the ſaid Richard to be impriſoned, and kept and detained in priſon at the ſuit of them the ſaid defendants for a certain long ſpace of time, to wit, the ſpace of twenty-five days then next following, by virtue of a certain other writ before that time ſued and proſecuted by the ſaid defendant out of the ſaid court of our ſaid lord the king, before the king himſelf, againſt the ſaid R. for the recovery of a certain other large ſum of money, to wit, the ſum of ninety-two pounds and upwards, pretended to be due to them as aſſignees of the eſtate and effects of one H. Jordan from the ſaid Richard upon certain ſuppoſed promiſes and undertakings in the ſaid laſt-mentioned writ ſpecified, whereas in truth and in fact no ſum of money whatſoever for which the ſaid Richard was liable to be held to bail, was at the time of ſuing out the ſaid laſt mentioned writ, or of his laſt-mentioned impriſonment and detention, due or owing from him to the ſaid defendants, as ſuch aſſignees, or otherwiſe on any account whatſoever, and the ſaid Richard ſays, that the ſaid defendants have not proſecuted their ſaid laſt mentioned action or ſuit againſt him with effect, and the ſame is now wholly ended and determined, and that by reaſon of the premiſes laſt aforeſaid he hath been greatly oppreſſed and injured, and put to great trouble, inconvenience, and expence, to wit, at L. &c. aforeſaid, to his damage of one thouſand pounds, and therefore he brings ſuit, &c. Pledges, &c. S. MARRYAT.

2d Count.

(a) It has been decided in the King's Bench, that an action will lie for ſaying of a perſon that he is a ſwindler, on error from C. B.

P. R. } MIDDLESEX, to wit. For that whereas the
a mar ſt } ſaid plaintiff now is a good, true, honeſt, juſt, and
J. W. I. } faithful ſubject of this kingdom, and as ſuch hath al-

Declaration for charging the plaintiff, who was a lottery-office keeper, with having ſwindled him the defendant out of a ſhare in a lottery-ticket.

ways from the time of his nativity hitherto behaved and governed himſelf, and ha h not ever b·en guil'y, or until the t me of the ſpeaking and publiſhing of the ſev ral falſe, feigned, ſcan alous, opprobrious, and malicious w·rds hereafter men ioned by the ſaid defendant, to, of, or concerning the ſaid plaintiff, been ſuſpected to have been guilty of ſw indling, cheating, fraud, deceit, or diſhoneſty, or of any other ſuch hurtful crime, and until the time of the ſpeaking and publiſhing of the ſeveral falſe and ſcandalous words hereafter mentioned, was always reputed, eſteemed, and reſpected by and amongſt all his n ighbours and oth r good and worthy ſubjects of this kingdom to be a perſon of good nam , fame, and credit, to wit, at, &c. in, &c And whereas the ſaid plaintiff before and at the time of ſpeaking and publiſhing the ſaid ſeveral words was, and from thence hitherto h hb n, and ſtill is a lottery office keeper, and the buſineſs of a lo tery office k·eper hath for and during all that time uſed, exerciſed, followed, and carried on, and ſtill doth uſe, exerciſe, follow, and carry on with great integrity and honour, and without being guilty of ſw ndlin·, cheating, fraud, or any other ſuch hurtful cr·me or p·actice wh·ſoever to wit, at, &c. by means of which ſaid f·ir l pra·tices, he the ſaid plaintiff before the ſpeaking and publiſhing of the ſaid ſever l w·rds, had not only deſervedly gained the good opinion and credit of his n·ighbours and other good and worthy ſubjects of th· kingdom to whom he was in any wiſe known, but alſo by means th·reof he the ſaid plaintiff had before then acqu·red, and then was fairly and honeſtly acquiring ſundry great gains and profits in the way of his aforeſaid buſin·ſs, to the comfort ble ſupport of himſelf and his family, and to the great incre·ſe of his riches, to wit, at, &c. And whereas the ſaid defendant befo·e the ſp·aking and publiſhing of the ſaid ſeveral words had bought, that is to ſay, at a certain office of the ſaid plaintiff in his aforeſaid buſineſs a certain part or ſhare, to wit, the ſixteenth part or ſhare of a certain lo·tery ticket at and for a certain price or ſum of mon·y, to wit, the price or ſum of one pound one ſhill·ng of lawful mon·y of Great Britain, to wit, at, &c., yet the ſaid defendant, well knowing all and ſingular the premiſes, but greatly envying the happy ſtate and condition of the ſaid plaintiff, and contriving and wickedly and maliciouſly intending to injure the ſaid plaintiff in his aforeſaid good name, fame, and credit, and to bring him into public ſcandal, infamy, and diſgrace with and amongſt all his n·ighbours and other good and worthy ſubjects of this kingdom, and to cauſe it to be ſuſpected and believed that he the ſaid plaintiff had been and was a perſon guilty of ſw·ndling, cheating, and fraud, and had attempted and endeavoured to ſwindle, cheat, and defraud him the ſaid defendant of the price of the ſaid part or ſhare of the ſaid lottery ticket ſo bought by him the ſaid defendant as aforeſaid, and thereby not only to injure the ſaid plaintiff in his aforeſaid buſineſs, but to ſubject him to the pains and penalties by the laws of this kingdom made and provided againſt, and inflicted on perſons guilty of ſwindling, cheating, and defrauding, and to harraſs, op-

preſs,

preſs, impoveriſh, and wholly ruin him the ſaid plaintiff, heretofore, to wit, on, &c. at, &c. in a certain diſcourſe which the ſaid defendant then and there had with the ſaid plaintiff, in the preſence and hearing of divers good and worthy ſubjects of this kingdom, of and concerning the ſaid plaintiff in his ſaid buſineſs, he the ſaid defendant then and there falſely and maliciouſly ſaid, rehearſed, proclaimed, and loudly publiſhed, to, of, and concerning the ſaid plaintiff in his aforeſaid buſineſs, theſe falſe, feigned, ſcandalous, opprobrious, and malicious words following, that is to ſay, [here ſet forth the words with their proper inuendos]. [There were four other Counts of the ſame kind.] By means of the ſpeaking and publiſhing of which ſaid ſeveral falſe, &c. by the ſaid defendant, to, of, and concerning the ſaid plaintiff, he the ſaid plaintiff is greatly injured in his aforeſaid good name, &c. and brought into public ſcandal, infamy, and diſgrace with and amongſt all his neighbours and other good and worthy ſubjects of this kingdom to whom he was in anywiſe known, inſomuch that divers of thoſe neighbours and ſubjects, to whom the innocence and integrity of the ſaid plaintiff in the premiſes were unknown, have, on occaſion of the ſpeaking and publiſhing of the ſaid ſeveral words, from thence hitherto ſuſpected and believed, and ſtill do ſuſpect and believe him the ſaid plaintiff to have been and to be a perſon guilty of ſwindling, cheating, and fraud, and that he the ſaid plaintiff did attempt and endeavour to ſwindle, cheat, and defraud the ſaid defendant, whereby he the ſaid plaintiff hath been and is greatly injured and damnified in his aforeſaid buſineſs and otherwiſe, to wit, at, &c., to the damage of the ſaid plaintiff of five hundred pounds, and therefore he brings his ſuit, &c.

Drawn by MR. TIDD.

[The precedent belongs to the preceding head, Not for Words.—See index.]

N C } MIDDLESEX, to wit. For that whereas he the
againſt } ſaid plaintiff, before the committing of the grievance by
L. G. } the ſaid defendant hereafter next mentioned, was indebted to the ſaid defendant in a certain large ſum of money, to wit, the ſum of forty pounds of lawful, &c. *upon and by reaſon of the ſeveral conſiderations of the premiſes* and conſiderations ſpecified in the writ of our lord the king hereafter next mentioned to have been ſued out by the ſaid defendant againſt him the ſaid plaintiff, to wit, at Weſtminſter, in the ſaid county of Middleſex, and being ſo indebted, the ſaid defendant for the recovery of the ſaid laſt-mentioned forty pounds ſo due to him as aforeſaid, heretofore, to wit, on the aforeſaid fifteenth day of May, in A. D. 1781, but without the knowledge of the ſaid plaintiff, ſued and proſecuted out of the ſaid court of our lord the now king, before the king himſelf, the ſaid court then and ſtill being held at Weſtminſter, in the ſaid county of Middleſex, againſt him the ſaid plaintiff a certain writ of our ſaid lord the king, called a *capias ad reſpondendum*, directed to the then ſheriff of the ſaid county of Middleſex, by the deſcription

Declaration for maliciouſly cauſing plaintiff to be arreſted after payment of the debt, by virtue of a writ which had been ſued out previous to ſuch payment.

ſcription of the ſheriff of Middleſex, *by which* ſaid laſt-mentioned writ our ſaid lord the king commanded the ſaid ſheriff that he ſhould take the ſaid plaintiff by the name and deſcription of, &c. if he ſhould be found in his bailiwick, and ſafely keep him, ſo that he might have him before our ſaid lord the king, on, &c. wheresoever our ſaid lord the king ſhould then be in England, to anſwer the ſaid defendant in a plea of on the caſe on promiſes to the damage of the ſaid defendant of ſixty pounds as it was ſaid, and that the ſaid ſheriff ſhould have *then and there that writ* † As by the ſaid plaintiff in fact further ſaith, that he the ſaid plaintiff, after the ſuing forth of the aforeſaid writ, and before the ſaid plaintiff had any notice or knowledge of the ſuing out or proſecuting of the ſame, and alſo before the day appointed for the return of the ſame writ, and before the arreſt of the ſaid plaintiff under and by virtue of the ſame hereinafter next-mentioned, to wit, on, &c. at, &c. aforeſaid, paid to the ſaid defendant the ſum of forty pounds in due to him as aforeſaid, yet the ſaid plaintiff in fact ſaith further, that the ſaid defendant contriving and maliciouſly intending to harm, injure, and prejudice him the ſaid plaintiff, and to put him to great expence, and otherwiſe to trouble and aggrieve him, afterwards, and after the ſaid defendant had been and was ſo aforeſaid paid and ſatisfied the ſaid ſum of forty pounds, for the recovery whereof he ſued and proſecuted the aforeſaid writ of *capias ad reſpondendum* againſt him the ſaid plaintiff as aforeſaid, to wit, on the twenty firſt day of May, in A. D. 1781 aforeſaid, at, &c. aforeſaid, wrongfully, injuriouſly, and maliciouſly, and notwithſtanding ſuch payment and diſcharge of the ſaid ſum of forty pounds for the recovery whereof he ſued and proſecuted the ſaid writ of *capias ad reſpondendum* as aforeſaid, cauſed and procured the ſaid plaintiff to be arreſted and taken by his body by the aforeſaid ſheriff of the ſaid county of Middleſex, under and by virtue of the aforeſaid writ of *capias ad reſpondendum*, ſo ſued out by the ſaid defendant as aforeſaid, and under colour and pretence of the ſame, and of the foreſaid cauſe of action therein ſpecified, and to be kept and detained in cuſtody under and by virtue of the ſaid writ, and under colour and pretence of the ſame, and of the cauſe of action therein ſpecified, for a long ſpace of time, to wit, &c. and until he the ſaid plaintiff was diſcharged from and out of cuſtody by the conſent and direction of the ſaid defendant, to wit, at, &c. aforeſaid, by means of which ſaid premiſes he the ſaid plaintiff was not only impriſoned in manner and for the time aforeſaid, during all which time he ſuffered and underwent great anxiety of mind, and was hindered and prevented from following and tranſacting his neceſſary and lawful affairs and buſineſs, but he was alſo forced and obliged to lay out and expend divers ſums of money, in the whole amounting to a large ſum of money, to wit, the ſum of ten pounds, in and about obtaining his releaſe and diſcharge from his ſaid arreſt and impriſonment, and his credit in buſineſs was, hath been, and is, on occaſion of the committing the grievance aforeſaid by the ſaid defendant, greatly ſhaken, impaired,

paired, and diminiſhed, and he the ſaid plaintiff alſo was, hath been, and is, on occaſion of the committing, &c. otherwiſe greatly injured and damnified, to wit, at, &c. aforeſaid: And whereas, 2d Count. &c [as in the firſt Count to the end of the recital of the writ at this † mark, omitting what is in Italic, then proceed as follows]; which ſaid laſt-mentioned writ he the ſaid defendant afterwards, and before the return thereof, or the time appointed for that purpoſe, to wit, on, &c aforeſaid, delivered to the then ſheriff of the ſaid county of Middleſex, to be executed in due form of law, to wit, at, &c. And the ſaid plaintiff in fact further ſaith, that after ſuch delivery of the ſaid laſt-mentioned writ to the ſaid ſheriff of the ſaid county of Middleſex as aforeſaid, to be executed as aforeſaid, before he the ſaid plaintiff had any knowledge or notice thereof, or of the ſuing out of the ſaid writ againſt him, and alſo before the day appointed for the return of the ſaid laſt-mentioned writ, before the arreſt of the ſaid plaintiff under and by virtue of the ſaid writ hereafter next-mentioned, to wit, on, &c. at, &c. aforeſaid, he the ſaid plaintiff paid to the ſaid defendant the ſum of forty pounds, for the recovery whereof he ſued out the ſaid laſt-mentioned writ as aforeſaid, by reaſon whereof the ſaid defendant ought to have directed the ſaid ſheriff of the ſaid county of Middleſex to whom he had ſo as aforeſaid delivered the ſaid writ for execution as aforeſaid, not to arreſt or take the ſaid plaintiff under and by virtue of the ſaid laſt-mentioned writ, yet the ſaid defendant, well knowing the premiſes laſt aforeſaid, but contriving to injure and prejudice him the ſaid plaintiff, to put him to great expence, and otherwiſe to haraſs and aggrieve him, did not direct the ſaid ſheriff of the ſaid county of Middleſex not to arreſt and take the ſaid plaintiff under and by virtue of the ſaid laſt mentioned writ, but wholly neglected ſo to do, whereby the ſaid plaintiff was afterwards, and before the time appointed for the return of the ſaid laſt-mentioned writ, to wit, on, &c. at, &c. and notwithſtanding the ſaid payment of the ſaid ſum of forty pounds for the recovery whereof the ſaid laſt-mentioned writ was ſued out as aforeſaid, was arreſted and taken into cuſtody by his body by the ſaid ſheriff of the ſaid county of M under and by virtue of the ſaid laſt-mentioned writ ſo delivered to him for execution as aforeſaid, and under colour and pretence of the cauſe of action therein ſpecified, and on that occaſion was kept and detained in cuſtody from thence for a long ſpace of time, to wit, &c. and he the ſaid plaintiff was releaſed and diſcharged from and out of the cuſtody of the ſaid ſheriff by the direction and conſent of the ſaid defendant, by means of which, &c. [*per quod* as in the firſt Count]. And whereas the ſaid defendant heretofore, to wit, on, &c. at, &c. ſued and proſecuted out of the ſaid court of our ſaid lord the now king, before the king himſelf, the ſaid court, &c. againſt him the ſaid plaintiff a certain other writ of our ſaid lord the king, called a *capias ad reſpondendum*, directed to the then ſheriff of the ſaid county of M. by the deſcription of the ſheriff of M. by which ſaid laſt-mentioned writ our ſaid lord the king com-

manded and [recite the writ as in the first Count], which said last-mentioned writ the said defendant afterwards, and before the return thereof, or the time appointed for that purpose, to wit, on, &c. directed to T. S. esquire, and W. C. esquire, then sheriff of the aforesaid county of Middlesex, to be executed in due form of law, to wit, at, &c. aforesaid; and the said plaintiff in fact further saith, that after such delivery of the said last mentioned writ to the said T. S. and W. C. as such sheriff as aforesaid, to be executed as aforesaid, and before the arrest of the said plaintiff under and by virtue of the same writ hereafter mentioned, to wit, on, &c. he the said plaintiff fully satisfied and discharged the said cause of action or suit in the said writ specified, by then and there paying to the said defendant, by and with his assent and consent, a large sum of money, to wit, the sum of forty pounds, in full satisfaction and discharge of all such damages as he the said defendant had sustained, as well on the occasion of the non-performance of the said several promises and undertakings in the said last-mentioned writ specified, as of his costs and charges in and about the prosecution of the said writ, by reason whereof the said defendant ought to have prevented the said plaintiff from being arrested and taken into custody under and by virtue of the said last mentioned writ, to wit, at, &c., yet the said defendant, well knowing the premises last aforesaid, but contriving to injure and prejudice him the said plaintiff, and to put him to a great expence, and otherwise to harass and aggrieve him, did not in any manner whatever prevent the said plaintiff from being arrested and taken into custody under and by virtue of, &c. but therein wholly failed and made default, and suffered and permitted the said plaintiff to be [illegible], and after the said cause of action in the said last mentioned writ aforesaid was discharged and satisfied as aforesaid, and before the time appointed for the [illegible] of the said writ, to wit, on, &c. at, &c. arrested and taken into custody by his body, by the aforesaid sheriff of M. to whom the said defendant delivered the said last-mentioned writ for execution as aforesaid, under and by virtue of, &c. and under colour and pretence of the aforesaid cause of action therein specified, and on that occasion to be kept and detained in custody from thence for a long space of time, to wit, &c. and until the said plaintiff was relieved and discharged from and out of the custody of the said sheriff, by the direction and consent of the said defendant, by means, &c. [as in the first Count.]

V. LAWES.

[illegible] for [illegible] MIDDLESEX, to wit. W. M. late of, &c. was attached to [illegible] answer R. S. P. in plea of trespass on the case, and thereupon, &c., [illegible] plaintiff that whereas the said plaintiff now is a good, &c. of this kingdom, [illegible] felony, and such hath always from the time of his nativity hitherto be- [illegible] him haved and governed himself, and until the time of the committing [illegible] a justice of the peace, who committed him for re-examination, and on such examination committed him for [illegible] information afterwards at the sessions preferred an indictment to the grand jury, who re- [illegible] the same [illegible]. Counts for imposing felony and larceny.

the grievances hereafter mentioned, hath always been accepted, eſteemed, and reſpected as ſuch amongſt all his neighbours and other good, &c. and hath never been guilty, nor until the committing of the grievance hereafter mentioned, been ſuſpected to have been guilty of any felony, larceny, or robbery, or of any other ſuch crime or offence by means whereof he the ſaid plaintiff, before the committing the ſeveral grievances hereafter mentioned, had deſervedly gained and acquired to himſelf the good opinion and credit of all his neighbours and other good, &c. to whom he was known, yet the ſaid defendant, well knowing the premiſes aforeſaid, but contriving, &c. to hurt, injure, and prejudice the ſaid plaintiff in his aforeſaid good name, fame, credit, and reputation, and to cauſe him to be eſteemed and reſpected amongſt his neighbours and other good, &c. to be a felon and a thief, and to cauſe him to undergo the pains and penalties by the laws and ſtatutes of this realm made and provided againſt and on thoſe who are guilty of felony or larceny, and to cauſe him to be imprisoned, and kept and detained in priſon, and to vex, diſturb, and diſquiet him, and make him undergo and ſuffer great hardſhips, pains, and labours both of body and mind, and otherwiſe to injure him, heretofore, to wit, on, &c. at, &c. falſely and maliciously, and without any reaſonable or probable cauſe whatever alledged and objected againſt plaintiff, that he the ſaid defendant did ſuſpect that the ſaid plaintiff had before then feloniouſly ſtoſen away, taken, and carried away, divers, to wit, two ducks, the property of him the ſaid defendant, and then and there, for the ſaid ſuppoſed offence, falſely and maliciouſly, without, &c. arreſted, and cauſed and procured the ſaid plaintiff to be arreſted by his body, and carried and conveyed him, and cauſed and procured him to be carried and conveyed in cuſtody before one C. T. eſq. then and ſtill being one of the juſtices of our lord the king in and for the ſaid county of Middleſex, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed within the ſaid court, and to be examined by and before the ſaid C. T. eſquire, ſo being ſuch juſtice as aforeſaid, of, upon, and for the ſaid ſuppoſed crime or offence, and then and there falſely and maliciouſly, and without, &c. cauſed and procured the ſaid C. T. ſo being ſuch juſtice as aforeſaid, to commit the ſaid plaintiff into the cuſtody of the keeper of a certain priſon of our ſaid lord the king, in the county of Middleſex, to wit, at a certain priſon of our ſaid lord the king, called New Priſon, Clerkenwell, and to make out and grant under his hand and ſeal, as ſuch juſtice as aforeſaid, a certain warrant or mandate, directed to the ſaid keeper of the aforeſaid priſon or his deputy, bearing date on, &c. whereby the ſaid juſtice commanded, authoriſed, and required the ſaid keeper of the ſaid priſon, or his deputy, to receive into his cuſtody the body of the ſaid plaintiff for further examination as to the ſaid offence imputed and charged upon him the ſaid plaintiff as aforeſaid, on Thurſday morning then next, at ten of the clock, and him ſafely keep in his cuſtody until he ſhould thence be diſcharged

charged by due courſe of law, to wit, at, &c. aforeſaid; and the ſaid defendant alſo maliciouſly cauſed and procured the ſaid plaintiff to be kept and detained in cuſtody and in the aforeſaid priſon of our ſaid lord the king, under and by virtue of the aforeſaid warrant or mandate, from thence until and upon the day of A. D. aforeſaid, and during that time, to wit, on the ſaid day of A. D. aforeſaid, at Weſtminſter aforeſaid, and before the aforeſaid juſtice, falſely and maliciouſly, and without, &c. again alledged and complained againſt him the ſaid plaintiff, that he the ſaid defendant did ſuſpect that the ſaid plaintiff had before then feloniouſly taken and carried away the aforeſaid ducks of him the ſaid defendant, and then and there maliciouſly, and without, &c. cauſed and procured the ſaid C. T. ſo being ſuch juſtice as aforeſaid, to make and grant a certain other warrant under his hand and ſeal as ſuch juſtice as aforeſaid, bearing date, &c. and directed to the aforeſaid keeper of the ſaid priſon, called New Priſon, or his deputy, whereby he the ſaid juſtice commanded and required, and authoriſed the ſaid keeper, or his deputy, to detain in his cuſtody the body of the ſaid plaintiff ſo charged and accuſed before him the ſaid juſtice as laſt aforeſaid, and him ſafely keep in his cuſtody until he ſhould be diſcharged by due courſe of law: And the ſaid plaintiff alſo falſely, and without any reaſonable, &c. cauſed and procured the ſaid plaintiff to be detained and kept in cuſtody as well in the ſaid priſon called New Priſon as aforeſaid, as in a certain other priſon of our ſaid lord the now king, called Newgate, under and by virtue and in conſequence of the ſaid laſt-mentioned warrant or mandate, for a long ſpace of time, and until his diſcharge hereafter mentioned, to wit, at W. aforeſaid: And the ſaid plaintiff in fact further ſaith, that whilſt he the ſaid plaintiff was ſo in cuſtody as aforeſaid, to wit, at the general ſeſſions of the peace of our lord the king, holden in and for the county of M. at Hick's Hall, in Saint John-ſtreet, on Tueſday the fourteenth day of May, in the twenty ſecond year of the reign of lord George the Third, king of Great Britain, &c. before William Mainwaring, eſquire, &c. &c. &c. and others their fellows, juſtices of our ſaid lord the king aſſigned to keep the peace, and alſo to hear and determine, &c committed in the ſaid county, falſely and maliciouſly, &c. and without, &c. preferred and preſented, and cauſed, &c. to be, &c. to the jurors of the grand inqueſt, then and there, to wit, at the ſaid ſeſſions ſworn and charged to enquire for our lord the king and the body of the ſaid county of Middleſex, a certain bill of indictment againſt the ſaid plaintiff, by the name and deſcription of, &c. charging and accuſing, and purporting that the ſaid plaintiff, on the twenty-ninth day of April A. D. 1782 aforeſaid, feloniouſly ſtole the ſaid ducks of the ſaid defendant ſo by him alledged and inſinuated to have been ſtolen by him the ſaid plaintiff aforeſaid, which ſaid bill of indictment the ſaid jurors of the ſaid grand inqueſt did then and there return into the ſaid court of the ſaid ſeſſion ſo holden as aforeſaid *not found*, whereupon the ſaid plaintiff was then and there diſcharged from and out of cuſtody; and

and the ſaid plaintiff doth alſo aver, that he is not nor is in anywiſe guilty of the ſaid ſuppoſed felony or offence ſo charged upon, alledged againſt, and imputed to him as aforeſaid, to wit, at, &c.: And the ſaid plaintiff in fact further ſaith, that the ſaid defendant, further contriving and intending as aforeſaid, at the aforeſaid general ſeſſions of the peace, holden in and for the county of Middleſex, at Hick's Hall, in St. John's-ſtreet, on, &c. in the twenty-ſecond year, &c before, &c. and others their fellows juſtices of our ſaid lord the king aſſigned to keep the peace, &c. and alſo to hear and determine, &c, committed in the ſaid county, falſely and maliciouſly, and without, &c. preferred and proſecuted and cauſed, &c. to the jurors of the grand inqueſt then and there, to wit, at the ſaid ſeſſion ſworn and charged to enquire for our ſaid lord the king and the body of the ſaid county of Middleſex, a certain other bill of indictment againſt the ſaid plaintiff, by the name, &c of, &c. charging, accuſing, and purporting that the ſaid plaintiff, on the aforeſaid day, &c feloniouſly ſtole divers, to wit, two other ducks of the ſaid defendant, which ſaid laſt-mentioned bill of indictment the jurors of the ſaid grand inqueſt did then and there return into the ſaid court of the ſaid ſeſſion, ſo holden as aforeſaid, "not found," and the ſaid plaintiff avers, that he was not, nor is, guilty of the ſaid ſuppoſed felony in the ſaid laſt mentioned bill of indictment ſpecified, and ſo charged upon and alledged againſt the ſaid plaintiff as aforeſaid, to wit, at, &c.: And the ſaid plaintiff further ſaith, that the ſaid defendant, further contriving and intending as aforeſaid, on, &c. at, &c. falſely and maliciouſly, and without, &c. impoſed the crime of felony on him the ſaid plaintiff. [Add another like Count, only for larceny inſtead of robbery], by means of which ſaid ſeveral premiſes the ſaid plaintiff is greatly hurt, injured, and prejudiced in his aforeſaid good name, &c. and is brought into great ſcandal, ignominy, and diſgrace amongſt all his neighbours and other good, &c. and hath been taken and ſuſpected to be a felon and a thief, and he the ſaid plaintiff was alſo impriſoned and kept and detained in priſon in manner and for the time hereinbefore mentioned, and ſuffered and underwent many and arduous troubles and labours both of body and mind, and during all which time he was hindered and prevented from managing, conducting, and tranſacting his neceſſary affairs and buſineſs, and was forced and obliged to lay out and expend a large ſum of money in and about the obtaining his releaſe from and out of cuſtody as aforeſaid, and in and about the defence of himſelf and the manifeſtation of his innocence in the premiſes as alledged and objected againſt him as aforeſaid; and he the ſaid plaintiff alſo was, hath been, and is, on occaſion of the ſeveral premiſes aforeſaid, otherwiſe greatly injured and damnified, to wit, at, &c, wherefore he the ſaid plaintiff ſaith he is injured, and hath ſuſtained damage to the amount of two hundred pounds, &c. V. LAWES.

Plaintiff obtained a verdict with 5l damages.

Michaelmas

Michaelmas Term, 24, Geo. III.

Declaration for charging plaintiff of felony, taking him up, carrying him before a justice of peace, who committed him to prison, indicting him at the sessions, which indictment was tried at the Old Bailey, and plaintiff was acquitted

LONDON, to wit J. C. complains of R. C being, &c.; for that whereas the said J. now is a good, honest, just, and faithful subject of this realm, and as such, &c. and until the time of committing the grievance hereafter mentioned, &c. had been esteemed and respected as such amongst all his neighbours and other good, &c. and hath never been guilty, nor until the committing, &c. been suspected to have been guilty of any felony, larceny, or robbery, or any other such crime or offence, whereby he the said plaintiff, before the committing of the several, &c. had deservedly, &c. and other good, &c to whom he was known; yet the said defendant, well knowing, &c but contriving, &c. to hurt, injure, and prejudice the said plaintiff in his aforesaid good name, &c and to cause him to be esteemed, &c. amongst his neighbours and other good, &c to be a felon and a thief, and a person guilty of larceny and robbery, and to cause him to undergo the pains and penalties by the laws and statutes of this realm provided, and inflicted on those who are guilty of felony, larceny, and robbery, and to cause him to be imprisoned, and to be kept and detained in prison, or otherwise to injure him, heretofore, to wit, on, &c. falsely, &c. and without, &c charged and accused the said plaintiff with having feloniously stolen from the pocket of the said defendant a certain handkerchief, the property of him the said defendant, and then and there, that is to say, on, &c. at, &c. falsely, &c. and without, &c. arrested and caused and procured, &c. to be arrested and taken into custody of a constable for the supposed offence, and afterwards, to wit, on, &c wrongfully, &c. and without, &c. forced and obliged the said plaintiff to go and appear before a certain justice assigned to keep the peace of our said lord the now king, that is to say, before A. B. esquire, then and still being one of the justices of our lord the now king, assigned to keep the peace of our lord the now king in and for the county of Middlesex, and also to hear and determine divers felonies and other misdeeds committed in the said county, and to be examined by and before the said justice of and upon, and for, and concerning the said offence, and then and there, that is to say, on, &c. falsely, &c. and without, &c. caused and procured the said justice to commit the said plaintiff to and into the custody of the keeper of a certain prison of our said lord the king, to wit, a certain prison called New Prison, and to make out and grant under his hand and seal, as such justice as aforesaid, a certain warrant and mandate, directed to the said keeper of the aforesaid prison, or his deputy, and bearing date, &c. whereby he the said justice commanded, authorized, and required the said keeper of the aforesaid prison, or his deputy, to receive into their custody the body of the said plaintiff, and him safely to keep in their custody until the said plaintiff should be thence discharged by due course of law; and the said defendant did thereupon falsely, &c. and without, &c. cause and procure the said plaintiff to be kept and detained in custody, that is to say, as well in the said prison called

called New Priſon, as in a certain other priſon of our ſaid lord the king, called Newgate, otherwiſe and by virtue and in conſequence of the ſaid warrant or mandate, for a long ſpace of time, and until his acquittal hereafter next mentioned, to wit, at, &c: And the ſaid plaintiff further ſaith, that whilſt the plaintiff was ſo in cuſtody as aforeſaid, that is to ſay, "at the general quarter ſeſſions + of the peace of our ſaid lord the king, holden for the county of Middleſex, at the ſeſſions houſe for the ſaid county, on, &c. in the twenty third year of the reign of, &c. before W. M. eſquire, &c. &c. and other their fellows, juſtices of our ſaid lord the king, aſſigned to keep the peace in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdeeds committed in the ſame county, the defendant falſely, &c. and without, &c. indicted him the ſaid plaintiff, and cauſed, &c to be, &c. *upon and for the ſaid ſuppoſed offence hereinbefore mentioned*, by the name and deſcription of, &c.; for that he the ſaid plaintiff, on, &c. in the twenty-third, &c with force and arms, at and in the pariſh and county laſt aforeſaid, one linen handkerchief of the value of tenpence, of the goods and chattels of the ſaid plaintiff, then and there being found, feloniouſly did ſteal, take, and carry away, againſt the peace of our ſaid lord the king *his crown and dignity*." And the ſaid plaintiff further ſaith, that the ſaid laſt mentioned juſtices, afterwards, to wit, on the delivery of the king's gaol of Newgate, holden for the county of Middleſex, at Juſtice Hall, in the Old Bailey, in the ſuburbs of the city of London, on, &c. in the twenty-third year, &c. before N. N. eſquire, mayor of the city of London, F. B. eſquire, one of the juſtices of our ſaid lord the now king, aſſigned to hold pleas before the king himſelf, J. H. eſquire, one of the juſtices of, &c. &c. and others their fellow juſtices of our ſaid lord the king, aſſigned to deliver the ſaid gaol of Newgate of the priſoners therein being, did, by their proper hands deliver there in the court of record a form of law to be determined the aforeſaid indictment againſt him the ſaid plaintiff, and the ſaid defendant did falſely, &c. without, &c. proſecute the ſaid indictment, and cauſe and procure the ſame to be proſecuted againſt him the ſaid plaintiff, to wit, at, &c. until he the ſaid plaintiff afterwards, to wit, at the ſame delivery of the ſaid gaol of our ſaid lord the king of Newgate, holden for the county of Middleſex, at Juſtice Hall aforeſaid, on, &c. in the twenty-third, &c. before the ſaid juſtices of our ſaid lord the king above named, and others their fellow juſtices as aforeſaid, was of the premiſes in the ſaid indictment contained in due manner, and according to due courſe of law, by a jury of the country acquitted, to wit, at, &c.: And the ſaid plaintiff in fact further ſaith, that the ſaid defendant, further contriving and intending as aforeſaid, heretofore, that is to ſay, at the general quarter ſeſſions, &c. &c. [as in the firſt Count from this mark + to the end, omitting what is in Italic. 3d Count, for impoſing the crime of felony on the plaintiff. 4th Count, for impoſing the crime of larceny]: By means of which ſaid ſeveral premiſes and other the proſecutions

2d Count, indictment only.

Concluſion.

and

and grievances hereinbefore mentioned and done, committed and carried on by the ſaid defendant againſt the ſaid plaintiff, he the ſaid plaintiff was not only impriſoned, and kept and detained in priſon, in manner and for the time aforeſaid, during which he was prevented from carrying on his neceſſary and lawful affairs and buſineſs, but he hath alſo been greatly hurt, injured, and prejudiced in his aforeſaid good name, &c. and forced and obliged to lay out and expend a large ſum of money in and about the defence of himſelf and the manifeſtation of his innocence in the premiſes, and about the obtaining his releaſe and diſcharge out of cuſtody; and he alſo is and hath been, on occaſion of the ſeveral premiſes aforeſaid, otherwiſe greatly injured and damnified; to the damage, &c. one thouſand pounds. V. LAWLS.

Plaintiff obtained a verdict for 2col.

20. Geo. III.

Declaration for maliciouſly exhibiting an information againſt the plaintiff, before the commiſſioners of excife.

LONDON, to wit. T. M. late of, &c. C. M. late of, &c. and E. C. late of, &c. were attached to anſwer T. P. in a plea of, &c.; for that whereas he the ſaid plaintiff now is a good, &c. and from the time of his nativity hitherto hath always behaved and governed himſelf, to wit, at, &c., yet the ſaid defendant well knowing all and ſingular the premiſes, but contriving, and maliciouſly and wickedly intending, wrongfully and unjuſtly to haraſs, oppreſs, prejudice, aggrieve, and impoveriſh the ſaid plaintiff, and to put him to great trouble and expence without any reaſonable, &c. and *of their mere malice towards the ſaid plaintiff*, and for their private lucre and gain, heretofore, to wit, on, &c. within the limits of the office of London for the duties of excife, to wit, at, &c. did falſely, &c. without, &c. exhibit and cauſe and procure to be, &c. to and before the commiſſioners and governors duly nominated and appointed by his ſaid majeſty for his receipt of the exciſe, a certain falſe and malicious complaint and information againſt the ſaid plaintiff, in the words and to the tenor and effect following, that is to ſay, [here ſet out the information verbatim]; and the ſaid plaintiff ſaith, that the ſaid defendant did falſely, &c. and without, &c. proſecute, and cauſe and procure, &c. the ſaid complaint and information ſo exhibited againſt him the ſaid plaintiff as aforeſaid, until and upon the day of, &c. when the ſaid complaint and information came on to be heard, adjudged, and determined by and before three of the ſaid commiſſioners and governors duly nominated, conſtituted, and appointed by his ſaid majeſty for his receipt of the exciſe, that is to ſay, at the ſaid chief office in London for the duties of exciſe, to wit, at, &c., and the ſaid complaint and information was then and there by and before the ſaid laſt-mentioned commiſſioners and governors duly heard, and upon the hearing thereof they the ſaid commiſſioners and governors laſt-mentioned did then and there, to wit, on, &c. diſmiſs the ſaid complaint and information,

formation, the ſaid plaintiff was then and there in due manner, and according to the courſe of the law diſcharged and acquitted, and the ſaid complaint and information was then and there duly determined, to wit, &c.; by means of which ſaid ſeveral premiſes he the ſaid plaintiff was duly ſummoned and obliged to be and appear, and to make his defence before the ſaid laſt-mentioned commiſſioners and governors, and was forced and obliged to lay out and expend, and did, &c. divers ſums of money, in the whole, &c. in and about his ſaid defence, and was forced to undergo and ſuffer, and did, &c. divers and many very great and arduous pains and labours of body and mind, and was by means of the premiſes aforeſaid, hindered and prevented from conducting and tranſacting his neceſſary buſineſs for a long time, to wit, at, &c. and was, hath been, and is, on occaſion of the premiſes, otherwiſe greatly injured and damnified, to wit, at, &c.: And the 2d Count. ſaid plaintiff further ſays, that the ſaid defendants, further contriving, &c. heretofore, to wit, on, &c. at the chief office, &c. to wit, at, &c. did falſely, and without, &c. exhibit and cauſe, &c. to and before , commiſſioners and governors duly nominated, &c. a certain other falſe, &c. complaint alledged to be made as well for his preſent majeſty as the ſaid E. C. and thereby falſely, &c. and without, &c. did inform, &c. and cauſe, &c. the ſaid commiſſioners and governors laſtly mentioned to be informed, that within three months then laſt paſt [recite the information to the end of the firſt forfeiture]; and the ſaid defendants in and by the ſaid laſt-mentioned complaint, on, &c. did falſely, &c. and without, &c. further inform, and cauſe, &c. the ſaid commiſſioners, &c. laſtly mentioned to be informed, that on, &c. and within the limits and juriſdiction aforeſaid, the ſaid plaintiff had in his cuſtody [recite the information to the end of the 2d forfeiture]; and the ſaid plaintiff further ſaid, that the ſaid defendants did falſely, &c. and without, &c. proſecute, &c. and cauſe, &c. ſaid laſt-mentioned complaint, &c. [as in the firſt Count]: And the ſaid plaintiff in 3d Count. fact further ſaith, that the ſaid defendants, further contriving, &c. [as in the inducements to the firſt Count, omitting what is in Italic], heretofore, to wit, on, &c. [as in the ſecond Count] did falſely, &c. exhibit, &c. to and before the commiſſioners, &c. a certain other falſe complaint, &c. againſt the ſaid plaintiff, containing the falſe matters following, to wit, within three months [recite the information to the end of the firſt forfeiture]; and alſo, that on, &c. and within the limits, &c. [recite the information to the end of the ſecond forfeiture]: and the ſaid plaintiff in fact further ſaith, that the ſaid defendants did falſely and without, &c. proſecute, &c. [as in the ſecond Count to the end].

V. LAWES.

Damages 500l.

The firſt and ſecond Counts I drew in their preſent form; the third varied in ſome reſpects, but was afterwards altered into its preſent form, ſuppoſing it would prevent a nonſuit in caſe plaintiff would not be enabled to eſtabliſh malice;

fice; but the averment of the information being maliciously exhibited ſtill remains. Upon the whole, as the declaration at preſent ſtands, it is too long by the 3d Count, which does not materially differ from the ſecond, except in the inſtance before mentioned (on account of which it may perhaps be exceptionable), and the number of common ſloverts. No exception was taken to the declaration, but the defendants pleaded the general iſſue, and on the trial obtained verdict.

Declaration for maliciouſly charging the plaintiff with having ſtolen a quantity of hay, and cauſing him to be apprehended and to find bail for his appearance at a quarter ſeſſions, and for preferring a bill of indictment againſt the plaintiff, which the jury found to be true bill.

MONMOUTHSHIRE, to wit. Edmund William Rees complains againſt George Williams, being, &c. of a plea of treſpaſs on the caſe, for that whereas the ſaid E. W now is a good, true, honeſt, faithful, and worthy ſubject of this realm, and as ſuch good, true, honeſt, faithful, and worthy ſubject of this realm from the time of his nativity hitherto hath always behaved and governed himſelf, and has for all the time aforeſaid been held, eſteemed, and reputed amongſt all his neighbours and other good and worthy ſubjects of this realm to be a man of good name, fame, credit, and reputation and has always for his life time paſt lived and continued free, untouched, unſpotted, and wholly unſuſpected of and from all and all manner of theft, larceny, robbery, or felony, or any other ſuch hurtful crime; by reaſon of which ſaid premiſes he the ſaid E. W before the time of committing the ſeveral grievances hereafter mentioned had deſervedly gained the good opinion and eſteem of all his neighbours and other worthy ſubjects of this realm to whom he was known, to wit, at Abergavenny, in the county to ſaid, yet the ſaid George, well knowing the premiſes, but greatly envying the happy ſtate and condition of the ſaid E. W. and contriving and maliciouſly intending wrongfully and unjuſtly to injure the ſaid E. W. in his aforeſaid good name, fame, credit, and reputation, and to bring him into public ſcandal, infamy, and diſgrace with and amongſt all his neighbours and other good and worthy ſubjects of this realm, and to cauſe and procure the ſaid E. W. to be arreſted and impriſoned without any reaſonable or probable cauſe whatſoever, and thereby to make the ſaid E. W. to ſuffer and undergo many great and arduous troubles both of body and mind, and to put him to great charges and expences, and to impoveriſh and wholly ruin him, heretofore, to wit, on the twenty-firſt of October 1786, at A aforeſaid, in the county aforeſaid, falſely and maliciouſly, without any reaſonable or probable cauſe, affirmed that the ſaid E. W. had mown hay, and that he ſuſpected him of taking the ſame away from the lands of the ſaid George, and then and there falſely and maliciouſly, and without any reaſonable or probable cauſe, cauſed the ſaid E. W. by reaſon of the aforeſaid pretended ſuſpicion of felony, to be taken and arreſted by his body, and in cuſtody to be detained for a long time, to wit, for the ſpace of three days, and maliciouſly and unjuſtly afterwards, to wit, on the twenty-firſt of November, in the year aforeſaid, at A. aforeſaid, in the county aforeſaid, cauſed the ſaid E. W. ſo being in cuſtody as aforeſaid

to

to be brought before one Hanbury Davies, clerk, then and ſtill being one of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in and for the ſaid county of M. and alſo to hear and determine divers felonies, treſpaſſes, and miſdemeanors committed within the ſame county; by reaſon of the aforeſaid falſe affirmation and pretended ſuſpicion concerning the feloniouſly taking of the ſaid hay of the ſaid George, and cauſed the ſaid E. W. then and there before the ſaid H. D. concerning the premiſes aforeſaid to be queſtioned and examined, and the ſaid E. W. then and there to be detained until the ſaid E. W. then and there, together with one P. E. the bail of the ſaid E. W. had acknowledged and ſigned a certain recognizance to our ſaid lord the king, to wit, the aforeſaid E. W. in the ſum of twenty pounds of lawful money of Great Britain, and the ſaid P. E. in the ſum of ten pounds of like lawful money, with condition that the ſaid E. W. ſhould appear at the then next general quarter ſeſſions of the peace for the aforeſaid county of M. to be holden to anſwer to an indictment to be preferred againſt him by the ſaid G. for mowing and cocking a certain quantity of hay, value tenpence, and on a ſuſpicion of feloniouſly conveying the ſame away from the lands of the ſaid G. and not depart without leave of the court, at which ſaid general quarter ſeſſions of the peace, held at A. aforeſaid, in and for the county aforeſaid on the tenth of January, in the twenty-ſeventh year of the reign of our lord the now king, before J. H. W. R. L. T. H. T. F. D. T. W. J. and W. R. junior, eſquire, and other juſtices of our ſaid lord the king for the county aforeſaid, and alſo aſſigned to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed and done in the ſaid county, the ſaid E. W. appeared, and the ſaid G. then and there, to wit, on the ſame tenth of January, in the twenty ſeventh year of the reign of our lord the king aforeſaid, at the aforeſaid general quarter ſeſſions of the peace for the county aforeſaid, before the juſtices aforeſaid, maliciouſly, and without any reaſonable or probable cauſe, exhibited a certain bill of indictment in writing againſt the aforeſaid E. W. by the name of, &c. containing in it theſe falſe and ſcandalous matters following, to wit, "Monmouthſhire, the jurors of our lord the king on their oath preſent, that E. W. R. of, &c. on the firſt of January, in the twenty-ſeventh year of the reign of our ſovereign lord George the Third now king of Great Britain, &c. with force and arms, at the pariſh aforeſaid, in the county aforeſaid, a ſmall quantity of hay, of the value of ſixpence, of the goods and chattels of one G. W. then and there being found, then and there feloniouſly did ſteal, take, and carry away againſt the peace of our ſaid lord the king, his crown and dignity, and the ſaid G. falſely and maliciouſly, and without any reaſonable or probable cauſe, at the ſame general quarter ſeſſions of the peace held in and for the county aforeſaid, before the juſtices aforeſaid, aſſigned as well to keep the peace of our ſaid lord the king in the county aforeſaid as to hear and determine divers felonies, treſpaſſes, and miſde- Indictment.

misdemeanors in the said county, at A. aforesaid, in the county aforesaid, preferred the said bill of indictment to the jury then and there sworn, and attempted and endeavoured as much as in him lay to get the same by the said jury to be found a true bill, when in truth and in fact the matter therein contained was then and there wholly false, and so it then and there appeared to the said jury, who after having examined all such witnesses as the said G. thought fit to produce thereon, returned to the said court at the same general quarter sessions of the peace held in and for the said county no true bill; and thereupon the said E. W. and the said other persons so bound with him in the said recognizance as aforesaid were then and there duly discharged by the court of the same sessions from their aforesaid recognizance, and the aforesaid prosecution is wholly ended and determined, to wit, at A. aforesaid, in the county aforesaid: And the said G. of his further malice against the said E. W. and further contriving and intending as aforesaid, heretofore, to wit, on the said twenty-first of November, in the twenty-seventh year aforesaid, at A. aforesaid, falsely and maliciously, and without any reasonable or probable cause, charged and accused the said E. W. with the suspicion of having stolen a certain other quantity of hay of him the said G. and thereupon the said G. afterwards, to wit, on the same day and year last aforesaid, at A. aforesaid, falsely and maliciously, and without any reasonable or probable cause, caused and procured the said E. W. to be arrested by his body, and carried and conveyed in custody before the said H. D. so being such justice as aforesaid, and to be examined by and before such justice touching and concerning the said last-mentioned supposed crime, and to be thereupon bound and to procure bail for his appearance at the then next general quarter sessions of the peace of our said lord the king to be holden in and for the said county, to answer to an indictment for the said last mentioned supposed crime, whereby the said E. W. was forced to appear, and did actually appear at the said last-mentioned sessions, and the said G. at the same sessions, held on the tenth of January, in the year aforesaid, at A. aforesaid, maliciously, and without any reasonable or probable cause, did then and there prefer a bill of indictment against the said E. W. for the said last-mentioned supposed offence to the jury sworn at the said last-mentioned sessions, which said last-mentioned bill of indictment the said jury then and there found no true bill, and thereupon the said E. W. was then and there discharged by the court of the same sessions, and the said last-mentioned prosecution is wholly ended and determined, to wit, at A. aforesaid, in the county aforesaid; by reason of which said premises the aforesaid E. W. is not only extremely hurt, injured, and damnified in his good name, fame, credit, and reputation by the said G. but hath also fallen into great suspicion of having committed the aforesaid felony with very many true and faithful subjects of this realm to whom the innocency of the said E. W. in this behalf was unknown, and the subjects aforesaid on that account have withdrawn themselves

ing that plaintiff had discharged the grand jury not finding bill was sufficient to shew legal end to prosecution, which is necessary.

Buller J. in Morgan v. Hughes, Durn. East, 2 vol 29.

Count.

themſelves from the company and connection of the ſaid E. W. as from the perpetrator of the pretended baſe crimes aforeſaid, and with the ſaid E. W. altogether object and refuſe to engage or to have any concern whatſoever as before they were accuſtomed: And the ſaid E. W. has been compelled and obliged to undergo great pain and trouble both of body and mind, and to lay out and expend divers large ſums of money in this behalf, and to clear himſelf from the charges and accuſations of the ſaid G. thereupon made as aforeſaid; and by reaſon of the premiſes the ſaid E. W. has wholly loſt and been deprived of divers great gains and profits which he in his lawful occupation and employment might otherwiſe honeſtly and lawfully have gained and procured, at A. aforeſaid; to the damage of the ſaid E. W. of one hundred pounds; and therefore he brings ſuit, &c. Pledges, &c. W. WALTON.

REES *againſt* WILLIAMS. } MONMOUTHSHIRE, to wit. Edmund William Rees complains of George Rees, being, &c.; for that the ſaid George, deviſing and maliciouſly intending to aggrieve and oppreſs the ſaid E. W. and to ſubject him to the puniſhment provided by the laws againſt perſons guilty of forcible entries, and to deprive him of his liberty, and to put him to great charges and expence, did, at the general quarter ſeſſions of the peace of our ſovereign lord the king, holden at the town of Abergavenny, in and for the county aforeſaid, to wit, on Wedneſday the tenth day of January, in the twenty-ſeventh year of the reign of our ſaid ſovereign lord the now king, and in the year of Our Lord 1787, by and before T. H. W. R. L. T. H. eſquire, and other juſtices of our ſaid lord the king in the county aforeſaid, and alſo aſſigned to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed and done in the ſaid county, falſely and maliciouſly, and without any reaſonable or probable cauſe whatſoever, did cauſe and procure the ſaid E. W. to be indicted by the name of E. W. R. late of the pariſh of A. in the ſaid county of M. farrier, for that the ſaid G. W. late of the pariſh of M. in the ſaid county of M. yeoman, on the twenty-firſt of October, in the twenty-ſeventh year of the reign of our ſovereign lord George the Third, now king of Great Britain, &c. was poſſeſſed of certain pieces or parcels of land with the appurtenances, ſituate, lying, and being in the pariſh of M. in the ſaid county of M. with force and arms, and with ſtrong hand, unlawfully did enter, and the ſaid G. W. from the poſſeſſion of the ſaid land with the appurtenances aforeſaid, then and there, with force and arms, and with ſtrong hand, unlawfully did expel and put out to the great damage of the ſaid G. W. and againſt the form of the ſtatute in that caſe made and provided, to wit, at the town of Uſh, in the ſaid county: *And the ſaid G. falſely and maliciouſly, and without any reaſonable or probable cauſe whatſoever, afterwards, to wit, on the ſaid eighteenth day of April, in the twenty-ſeventh year aforeſaid, at the town of Uſh aforeſaid, in the ſaid*

Declaration for a malicious proſecution for a forcible entry, on which plaintiff was indicted, and apprehended, and afterwards acquitted by the jury.

county, maliciouſly, and under colour and pretence of the aforeſaid indictment, and pretended offence therein contained, cauſed the ſaid E. W. to be apprehended and kept and detained in cuſtody for a long ſpace of time, to wit, for the ſpace of forty eight hours, and until the ſaid E. W. found ſecurity to anſwer to the ſaid indictment under and by virtue of a certain proceſs iſſued out of the ſame court of quarter ſeſſions againſt the ſaid E. W. upon the ſaid indictment, and the ſaid G. then and there falſely and maliciouſly, and without any reaſonable or probable cauſe or pretence whatſoever, proſecuted, and cauſed and procured to be proſecuted the ſaid indictment againſt the ſaid E. W. until the ſaid E. W. afterwards, to wit, at the general quarter ſeſſions of the peace of our ſaid ſovereign lord the king, holden at the ſaid town of Uſh, in and for the county aforeſaid, to wit, on Wedneſday the eighteenth day of April, in the twenty-ſeventh year of the reign aforeſaid, in the ſaid year of Our Lord 1787, by and before R. S. R. L. D. F. eſquires, and other juſtices of our ſaid lord the king aſſigned and for the ſaid county, and alſo to hear and determine diverſe felonies, treſpaſſes, and miſdemeanors committed and done in the ſaid county, was lawfully and in due manner acquitted thereof by a jury of the ſame court, and diſcharged therefrom by the ſaid court, and the aforeſaid proſecution is wholly ended and determined, to wit, at the town of Uſh aforeſaid, in the county aforeſaid, and the ſaid E. W. avers that he was not guilty of the offence aforeſaid in the ſaid indictment laid to his charge, by reaſon of which ſaid premiſes the ſaid E. W. hath neceſſarily expended and laid out a large ſum of money, to wit, the ſum of one hundred pounds, *in procuring ſecurity for his ſaid appearance to anſwer the ſaid indictment, and hinder himſelf being impriſoned by reaſon of the ſaid indictment,* and in and about his defence thereto, and getting himſelf acquitted and diſcharged from the premiſes therein laid to his charge, to wit, at the town of Uſh aforeſaid, in the county aforeſaid: And the ſaid G. of his further malice againſt the ſaid E. W. and further deviſing and maliciouſly intending to aggrieve and oppreſs the ſaid E. &c. &c. &c. &c. [is in the firſt Count, omitting the words in Italic.] *Drawn by* Mr. GRAHAM.

Declaration againſt defendant for maliciouſly cauſing plaintiff to be indicted of perjury in a falſe affidavit made by him in ſupport of his bill againſt one A. B. againſt whom he had brought an action for the recovery of L. which by rule of B. R. was referred to the maſter to be taxed, which indictment plaintiff removed by *certiorari* into B. R. where, upon trial, he was acquitted.

MIDDLESEX, to wit. W. A. gentleman, complains of ſir W. Y. bart. and A. S. being in the cuſtody, &c. of a plea of treſpaſs on the caſe; for that whereas the ſaid W. A. now is a good, true, honeſt, juſt, and faithful ſubject of this realm, and as ſuch from the time of his nativity hath hitherto always behaved, had, and governed himſelf, and hath always, until the committing the grievance hereinafter mentioned, been ſaid, reputed, accepted, and eſteemed as ſuch amongſt all his neighbours and all other perſons to whom he was any ways known, and has never yet been

guilty,

guilty, or until the committing of the grievance hereinafter mentioned been ſuſpected to have been guilty of any kind of perjury, ſubornation of perjury, or any other ſuch hurtful crime; by means of which ſaid premiſes, he the ſaid W. A. before the falſe, ſcandalous, and malicious proſecution hereafter mentioned to have been commenced and carried on againſt him by the ſaid ſir W. and A. had deſervedly obtained and procured to himſelf the benevolence, good opinion, and credit of all his neighbours and other worthy ſubjects of this kingdom to whom he was any ways known, to wit, Weſtminſter, in the county of Middleſex aforeſaid, yet the ſaid ſir W. and A. well knowing all and ſingular the premiſes aforeſaid, but greatly envying the happy ſtate and condition of the ſaid W. A. and contriving and maliciouſly and unlawfully intending to hurt, injure, and prejudice the ſaid W. A. in his character and reputation, and to deprive him of his good name, credit, and to cauſe him to be eſteemed and reputed of ill diſpoſed neighbours and other worthy ſubjects of this kingdom to be a perſon guilty of perjury, and to cauſe him to undergo the pains and penalties by the laws and ſtatutes of this realm made and provided againſt perſons guilty of perjury, and to cauſe him to be impriſoned, and to be kept and detained in priſon, and to put him to great charge and expence, and to vex, diſturb, and diſquiet him, and to make him to undergo great hardſhips, pains, and labours both of body and mind, and to ruin him, heretofore, that is to ſay, on Monday, the day of , in the nineteenth year, &c. at the general ſeſſions of oyer and terminer of our ſaid lord the king, holden for the county of Middleſex, at Hicks's Hall, in Saint John's-ſtreet, in the ſaid county, before ſir John Hawkins, knight, J. B. J. C. eſquires, and others their fellow juſtices of our ſaid lord the king, aſſigned by his majeſty's letters patents under the great ſeal of Great Britain directed to the ſame juſtices and others in the ſaid letters named to inquire more fully the truth by the oath of good and lawful men of the ſaid county of Middleſex, and by the ways, means, and methods by which they ſhould or might better know (as well within liberties as without) by whom the truth of the matter might be better known of all treaſons, miſpriſions of treaſon, inſurrections, rebellions, counterfeitings, clippings, waſhings, fallifyings, and other falſities of money of Great Britain and other kingdoms and dominions whatſoever, and of all murders, felonies, manſlaughters, killings, burglaries, rapes of women, unlawful meetings, conventicles, unlawful uttering of words, aſſemblies, miſpriſions, confederacies, falſe allegations, treſpaſſes, riots, routs, detentions, eſcapes, contempts, falſities, negligencies, concealments, maintenances, oppreſſions, champarties, deceits, and all other evil doings, offences, and injuries whatſoever, and alſo the acceſſaries of them, within the county aforeſaid (as well within liberties as without), by whomſoever and in what manner ſoever done, committed, or perpetrated, and by whom, or to whom, when, how, and after what manner, and of all other articles and circumſtances

concerning the premiſes, and every of them, or any of them, in any manner whatſoever, and the ſaid treaſons and other the premiſes to hear and determine according to the laws and cuſtoms of England, falſely, and maliciouſly, and unlawfully, and without any reaſonable or probable cauſe whatſoever, indicted, and falſely, and maliciouſly, and wilfully, and without any reaſonable or probable cauſe whatſoever, cauſed and procured to be indicted the ſaid W. A. for that one Silvanus Lake, heretofore, that is to ſay, on the ninth of July, in the year of Our Lord 1771, at Taunton, in the county of Somerſet, was indebted to the ſaid W. A. in the ſum of of, &c. as well for the ſum of of like lawful money before that time paid and advanced to William Bridge as for divers other ſums of money paid and advanced by the ſaid W. A. and divers other perſons for and on the account of the ſaid Silvanus Lake; and the ſaid S. Lake being ſo indebted as aforeſaid, afterwards, to wit, on the ſame day and year aforeſaid, at T. aforeſaid, in the ſaid county of Somerſet, in conſequence thereof made his certain promiſſory note in writing, ſubſcribed with the proper hand writing of him the ſaid S. L. by which ſaid note the ſaid S did promiſe to pay unto the ſaid W. A. or order the ſum of pounds, with its lawful intereſt, for value received the ninth of July 1771, and that afterwards, that is to ſay, on the ſixteenth of July, in the year 1774, the ſaid S. L. being as well indebted to the ſaid W. A. for the ſaid ſum of pounds ſo due upon the ſaid promiſſory note of him the ſaid S. as for divers other ſums of money, amounting in the whole to the ſum of pounds, by his certain writing obligatory, bearing date the ſame ſixteenth of July, in the ſaid year of Our Lord 1774, and ſealed with the ſeal of him the ſaid S. did acknowledge himſelf to be held and firmly bound to the ſaid W. A. in the penal ſum of pounds, conditioned for the payment of the ſaid ſum of pounds, and that afterwards, that is to ſay, in the term of Saint Hilary, in the year of Our Lord 1775, and in the fifteenth year of, &c. now king of Great Britain, &c. the ſaid W. A. ſued the ſaid S. L. in a plea of debt by virtue of the ſaid writing obligatory in the ſaid court of our ſaid lord the king of the bench, at Weſtminſter aforeſaid, in the county of Middleſex; and ſuch proceedings were thereupon had, that the ſaid W. A. afterwards, to wit, in the ſaid term of Saint Hilary, in the fifteenth year aforeſaid, by the judgment of the ſame court, recovered as well his ſaid debt as his damages on account of the detaining of the ſaid debt to eighty ſhillings: And that afterwards, that is to ſay, on the twelfth of February, in the term of Saint Hilary, in the year of Our Lord 1776, and in the ſixteenth year of the reign of our ſaid ſovereign lord the king, a certain rule of the court of our ſaid lord the king of the bench at Weſtminſter aforeſaid, in the ſaid county of Middleſex, was made in the ſaid ſuit between the ſaid W. A. plaintiff, and the ſaid S. L. defendant, by which ſaid rule it was ordered by the ſame court that it ſhould be referred to one of the prothonotaries of that court, to tax the plaintiff's bill of coſts mentioned in the defendant's affidavit then

read

read in the ſaid court, and then to calculate, ſettle, and aſcertain what was due for plaintiff's intereſt and coſts on the bond given by the defendant to the ſaid plaintiff mentioned in the ſaid affidavit, and to take an account, ſettle, and aſcertain what, if any thing, was due and owing from the ſaid defendant to the plaintiff, the prothonotary, in taking ſuch account, making all juſt allowances, and that the plaintiff ſhould repay to the defendant what ſhould appear on the taking ſuch account to have been overpaid, and that the plaintiff ſhould deliver up all deeds, papers, and writings in his cuſtody belonging to the ſaid defendant: And the ſaid W. A. afterwards, to wit, on the fifth of June, in the year of Our Lord 1777, did exhibit to the court of our lord the king of the bench at Weſtminſter a certain affidavit of him the ſaid W. A. duly ſworn, with a certain paper writing thereto annexed, purporting to be the account of the ſaid S. L. with the ſaid W. A. which ſaid affidavit and paper writing remain affiled in the ſaid court of our ſaid lord the king of the bench at Weſtminſter, and that the ſaid W. A. wickedly and maliciouſly contriving and intending the ſaid S. L. unlawfully to aggrieve and oppreſs, and from the ſaid S. L. divers large ſums of money injuriouſly, unjuſtly, and unlawfully to compel the ſaid S. L. to pay divers large ſums of money to the ſaid W. A. on the fifteenth of March, in the eighteenth year, &c. and in the year of Our Lord 1778, at the pariſh of Saint Giles's in the Fields, in the ſaid county of M. came in his own proper perſon before ſir William De Grey, knight, then being the chief juſtice of our ſaid lord the king of the bench, and was then and there duly ſworn, and did take his corporal oath upon the holy goſpel of God before the ſaid ſir William De Grey, ſo being ſuch chief juſtice as aforeſaid (he the ſaid ſir William De Grey then and there having ſufficient and competent power and authority to adminiſter the ſaid oath in that behalf to the ſaid W. A.); and the ſaid W. A. being ſo ſworn, and not having the fear of God before his eyes, but being moved and ſeduced by the inſtigation of the devil, then and there, to wit, on the ſaid fifth of March, in the eighteenth year aforeſaid, and in the ſaid year of Our Lord 1778, at the ſaid pariſh of Saint Giles's in the Fields, in the ſaid county of Middleſex, upon his oath aforeſaid, before the ſaid William De Grey, falſely, maliciouſly, wickedly, wilfully, and corruptly did ſay, depoſe, ſwear, and make affidavit in writing, amongſt other things therein contained, in ſubſtance and to the effect following, that is to ſay, "That on or about the ſixteenth of July 1774, when an account was ſettled or liquidated between this deponent (meaning himſelf the ſaid William Alexander) and the defendant (meaning the ſaid S. L.), wherein this deponent (again meaning himſelf the ſaid W. A.) inſerted the following *item*, April the ſecond, paid Mr. William Bridge ſeven pounds, and charged three years intereſt, eight pounds one ſhilling (meaning ſeven pounds principal money, and one pound one ſhilling intereſt thereof to the ſaid ſixteenth of July, in the ſaid year of Our Lord 1774). The ſaid defendant (meaning the ſaid S. L.)

did not then pretend that the ſame (meaning the ſaid ſum of ſeven pounds ſo paid to the ſaid W. B. by the ſaid W. A. for and on account of the ſaid S. L.) made a part of a promiſſory note given to this deponent (meaning himſelf the ſaid W. A.) by defendant (meaning the ſaid S. L.) for forty-one pounds fourteen ſhillings (meaning the ſaid promiſſory note ſo given as aforeſaid by the ſaid S. L. to the ſaid W. A. on the ninth day of July, in the ſaid year of Our Lord 1771), but ſaith that he the ſaid defendant (meaning the ſaid S. L.) then inſiſted that he himſelf (meaning the ſaid S. L.) had paid the ſame (meaning the ſaid ſum of ſeven pounds) to the ſaid W. B. (meaning the ſaid W. B.); and this deponent (meaning himſelf the ſaid W. A.) ſaith that the ſaid forty one pounds fourteen ſhillings (meaning the ſaid ſum of forty-one pounds fourteen ſhillings, for and in conſideration of which the ſaid promiſſory note was ſo given as aforeſaid) was actually paid to or for the uſe of the ſaid defendant (meaning the ſaid S. L.), and that the ſaid ſum of ſeven pounds ſo paid to the ſaid W. B. by this deponent (meaning himſelf the ſaid W. A.) made no part thereof (meaning that the ſaid ſum of ſeven pounds ſo paid to the ſaid W. B. for and on account of the ſaid S. L. was not included in, and did not conſtitute a part of the ſaid ſum of forty-one pounds fourteen ſhillings for which the ſaid S. L. gave his ſaid promiſſory note as aforeſaid, on the ninth day of July, in the year of Our Lord 1771); and this deponent (meaning himſelf the ſaid W. A.) alſo ſaith that he (meaning himſelf the ſaid W. A.) did not receive any other ſum or ſums of money whatſoever of or from the ſaid defendant (meaning the ſaid S. L.), or of or from any other perſon or perſons whatſoever for or on his account (meaning the account of him the ſaid S. L.) at any time or times whatſoever between the month of November 1774 and the month of June 1775, other than and except ſuch ſum as are ſet forth in the paper writing or account annexed to the affidavit of this deponent (meaning himſelf the ſaid W. A.), heretofore made and now filed in this cauſe (meaning the ſaid paper writing or account annexed to the ſaid affidavit of him the ſaid W. A. filed in ſaid cauſe in ſaid court of our ſaid lord the king of the bench, at Weſtminſter the ſixth of June, in the year of Our Lord 1775; and this deponent (meaning himſelf the ſaid W. A.) ſaith that he (meaning himſelf the ſaid W. A.) actually paid two ſeveral ſums of and for the ſaid defendant (meaning the ſaid S. L.) to Mr. R. J. of, &c. to two quarters of years rent due to P. Eſquire, in reſpect of Mear Farm, the one due the twenty-fifth of September 1774, and the other on the twenty-fifth of March 1775; and that he (meaning himſelf the ſaid W. A.) never received the ſame (meaning the ſaid two ſums of and ſo paid to the ſaid R. J. by him the ſaid W. A. for and on the account of the ſaid S. L.), or any part thereof, or any other money from the ſaid defendant (meaning the ſaid S. L.) or any other perſon on his account or for his uſe (meaning on the account or for the uſe of the ſaid S. L.) between the ſaid month of November 1774 and the ſaid month of June 1776, or at any other

other time ſubſequent to the ſixteenth of July 1774, other than and except as aforeſaid (meaning except ſuch ſums as are ſet forth in the paper writing or account annexed to the ſaid affidavit of him the ſaid W. A ſworn on the ſaid fifth of June aforeſaid), without giving a receipt or ſome other acknowledgment for the ſame, as by the ſaid affidavit as ſworn on the ſaid fifth day of March, and remaining affiled in the ſaid court of our ſaid lord the king of the bench at Weſtminſter in the county of Middleſex, more fully appears:" Whereas in truth and in fact the ſaid S. L. on the ſixteenth day of July, in the ſaid year of Our Lord 1774, when the ſaid account in the ſaid laſt affidavit mentioned was ſo ſettled and liquidated between the ſaid W. A and the ſaid S. L wherein the ſaid W. A. inſerted the ſaid item, "April record, paid Mr William Bridge ſeven pounds, and charging thereon intereſt, eight pounds one ſhilling," did then pretend, and did then and there aſſert and maintain that the ſaid ſum of ſeven pounds ſo paid to the ſaid W. B on the ſecond day of April, in the ſaid year of Our Lord 1771, by the ſaid W. A for and on account of the ſaid S. L. did make a part of the ſaid promiſory note given by the ſaid S. L to the ſaid W. A. for [illegible] in the ſaid laſt mentioned affidavit mentioned: And whereas in truth and in fact the ſaid S. L. did not then or at any other time ſay that he himſelf the ſaid S. L. had paid the ſaid ſum, or any part thereof, to the ſaid Mr. W. B. or to any perſon on his account And whereas in truth and in fact the ſaid ſum of ſeven pounds ſo paid to the ſaid W. B. by the ſaid W. A for and on the account of him the ſaid S. L did make a part of the ſaid note for which ſaid ſum of the ſaid note was ſo given as aforeſaid by the ſaid S. L to the ſaid W. A.: And whereas in truth and in fact the ſaid W. A did receive certain ſums of money for and on the account of the ſaid S. L between the ſaid ſixteenth of November 1774 and the month of June 1775 other than and except ſuch ſums as are ſet forth in the ſaid paper writing or account annexed to the affidavit of the ſaid W. A. hereto-fore [illegible] and now affiled in the ſaid cauſe, and ſworn on the ſaid day of June, in the ſaid year of Our Lord 1777, that is to ſay, the ſaid W. A did receive a certain ſum of of and from one J Kingdon, on the twenty ſixth of December, in the year of Our Lord 1774, in the pariſh of , in the ſaid county of Somerſet, for and on the account of the ſaid S. L which ſaid laſt-mentioned ſum of pounds is not ſet forth in the ſaid paper writing or account annexed to the ſaid firſt affidavit of the ſaid W A made and affiled in the ſaid cauſe: And whereas in truth and in fact the ſaid W. A. did alſo receive another ſum of of and from one John Day, on the eighth day of April, in the ſaid year of Our Lord 1775, at Bridgewater, in the ſaid county of S. for and on the account of the ſaid S. L. which ſaid laſt-mentioned ſum of is not ſet forth in the ſaid paper writing or account annexed to the ſaid firſt affidavit of the ſaid W. A. made and affiled in the ſaid cauſe. And whereas in truth and in fact for the payment of for the ſaid S. L. by the ſaid W. A. to the ſaid Mr.

R. J.

R. J. for the ſaid quarter of a year's rent due to the ſaid P. T. eſquire, in reſpect of the ſaid farm called Mear Farm, on the twenty-fifth of December, in the year of Our Lord 1774, the ſaid W. A. did receive of and from the ſaid J. Kingdom, and the ſaid J. Kingdom did actually pay and give to the ſaid W. A. for and on the account of the ſaid S. L. on ſaid twenty-ſixth day of December, in ſaid year of Our Lord 1774, at the pariſh of aforeſaid, in ſaid county of S. between the month of November 1774, and the ſaid month of June in the year of Our Lord 1775, the ſum of of, &c. which ſaid laſt-mentioned ſum of is not mentioned or expreſſed in the ſaid affidavit of the ſaid W. A. ſworn on ſaid fifth of March, in the year of Our Lord 1778: And whereas in truth and in fact for the payment of the ſaid ſum of for the ſaid S. L. by the ſaid W. A. to the ſaid Mr. R. J. for the ſaid quarter of a year's rent due to the ſaid P. T. eſquire, in reſpect of the ſaid farm called Mear Farm, on ſaid twenty-fifth day of March, in the ſaid year of Our Lord 1775, the ſaid John Day did pay to the ſaid W. A. and the ſaid W. A. did receive from the ſaid J. D. for and on the account of the ſaid S. L. on the ſaid eighth of April, in the ſaid year of Our Lord 1775, at Bridgewater, in the ſaid county of S. between the ſaid month of November, in the year of Our Lord 1774, and the ſaid month of June, in the ſaid year of Our Lord 1775, another ſum of of like lawful money of Great Britain, which ſaid laſt-mentioned ſum of is not mentioned or expreſſed in ſaid affidavit of the ſaid W. A. on ſaid fifth day of March, in ſaid year of Our Lord 1778: And ſo the jurors aforeſaid, upon their oath aforeſaid, did ſay, that the ſaid W. A. on ſaid fifth day of March, in the ſaid year of Our Lord 1778, and in the eighteenth year of the reign of our ſovereign lord the now king, at the ſaid pariſh of Saint Giles's in the Fields, in the ſaid county of Middleſex, before the ſaid ſir William de Grey, ſo being ſuch chief juſtice as aforeſaid, he ſaid ſir William de Grey then and there having competent and ſufficient power and authority to adminiſter the ſaid oath to the ſaid William in that behalf falſely, maliciouſly, wickedly, wilfully, corruptly, on his oath aforeſaid, in manner and form aforeſaid, did commit wilful and corrupt perjury, to the great damage and oppreſſion of the ſaid S. L. to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity: And the ſaid W. A. further ſaith, that the ſaid ſir W. and Abraham falſely, maliciouſly, and unlawfully, and without any reaſonable or probable cauſe whatſoever, proſecuted, and falſely, and maliciouſly, and unlawfully, and without any reaſonable or probable cauſe whatſoever, cauſed and procured to be proſecuted ſaid indictment againſt ſaid W. A. to wit, at the general ſeſſions aforeſaid, until the ſaid indictment, with all things touching the ſame, was afterwards, to wit, in the term of the Holy Trinity, in the nineteenth year of the reign of our lord the now king, by virtue of his majeſty's writ of *certiorari*, before then ſued and proſecuted out of the court of our lord the now king, before the king himſelf, at

Weſtminſter, in the ſaid county of Middleſex, by and at the inſtance of the ſaid W. A. directed to the ſaid ſir John Hawkins, knight, T. C. J. B. and J. C. eſquires, duly removed, and brought into the ſaid court of our ſaid lord the king, before the king himſelf (the ſaid court then and ſtill being at Weſtminſter, in ſaid county of Middleſex), there to be determined; and the ſaid ſir William and Abraham falſely, maliciouſly, and unlawfully, and without any reaſonable or probable cauſe whatſoever, proſecuted, and cauſed and procured to be proſecuted the ſaid indictment againſt the ſaid W A. in the ſaid court of our ſaid lord the now king, before the king himſelf (the ſaid court then and ſtill being held at Weſtminſter, in the ſaid county of Middleſex), from the ſaid time of ſaid remo al thereof until the ſaid W. A. afterwards, to wit, on the third day of July, in the year of Our Lord 1779, at Weſtminſter aforeſaid, was thereof in due manner, and according to a due courſe of law, by a jury of the ſaid county of Middleſex, acquitted; by means of the proſecution of which ſaid indictment, and of the premiſes touching and concerning the ſame, the ſaid W. A. is greatly hurt, injured, leſſened, and prejudiced in his good name, fame, and credit, and has been brought into great ſcandal, ignominy, and diſgrace amongſt his neighbours and other good and worthy ſubjects of this kingdom, and has been by them taken, reputed, and eſteemed to be a perſon guilty of the heinous crime of perjury, and was impriſoned and detained in priſon for a long time, and was obliged to enter into a recognizance with ſufficient ſureties for his perſonal appearance to anſwer to the ſaid indictment, and alſo by means of the ſaid malicious proſecution was neceſſarily forced and obliged to lay out and expend, and did lay out and expend divers ſums of money, in the whole amounting to a large ſum, to wit, the ſum of one thouſand pounds, in and about his defence, and the obtaining his ſaid acquittance and diſcharge from his ſaid recognizance, and from other the premiſes aforeſaid, and to undergo many and very great and arduous troubles and labours both of body and mind in and about the defending himſelf in the premiſes and the manifeſtation of his innocence, and was hindered and prevented from following and tranſacting his neceſſary affairs and buſineſs for a long time, to wit, during all the time aforeſaid, to wit, at Weſtminſter aforeſaid, to the ſaid W. A. his damage of ten thouſand pounds; and therefore he brings ſuit, &c. J. MORGAN.

PETER MAYSON complains of E. F. being, &c.; for that whereas the ſaid P. now is, and at the ſeveral times hereinafter mentioned, and long before was a ſchoolmaſter, and kept a ſchool for the education and inſtruction of youth, to wit, at Froome, in the county of Somerſet: And whereas before the committing the grievance next hereinafter mentioned, one E. Fryer, an infant under the age of twenty-one years, to wit, about the age of fourteen

Declaration for ſuing a *habeas corpus* directed to the plaintiff to bring up the body of an infant under his tuition before lord Mansfield, and thereby putting him to great expence.

teen years, had been placed under the care and cuſtody of the ſaid P. as a ſcholar in his ſaid ſchool by *J. S. and S S* to be by him educated and maintained, and at the time of committing the grievance next hereinafter mentioned continued and was under the care and cuſtody of the ſaid P.; yet the ſaid E. F. well knowing the premiſes, but contriving and wrongfully, maliciouſly, and injuriouſly intending to injure the ſaid P and to put him to great and unneceſſary expence, on the thirteenth of March 1776, and wrongfully, and without any reaſonable or probable cauſe, proſecuted and ſued out, and cauſed to be proſecuted and ſued out of the court of our ſovereign lord the king, before the king himſelf, at Weſtminſter, a certain writ of *habeas corpus*, by which ſaid writ the ſaid P. was commanded that he ſhould have before William lord Mansfield, chief juſtice aſſigned to hold pleas before our ſaid lord the king, at his chambers in Serjeant's Inn, Chancery Lane, London, immediately after the receipt thereof, the body of the ſaid E. F. an infant, detained in the cuſtody of the ſaid P. as it was ſaid, together with the day and cauſe of his taking and detaining, by whatſoever name the ſaid E. F. was called, in the ſame to undergo and receive all and ſingular ſuch things as the ſaid chief juſtice ſhould then and there conſider of him in that behalf, and that he ſhould have then there the ſaid writ And the ſaid E. F. further contriving and wrongfully and maliciouſly intending as aforeſaid, afterwards, to wit, on the ſame day and year aforeſaid, at Weſtminſter aforeſaid, in the ſaid county, ſerved and cauſed to be ſerved the ſaid writ on the ſaid P. whereby the ſaid P. afterwards, to wit, on the ſame, &c. was compelled and obliged to carry and convey the ſaid L. I. from I in the county of Somerſet to London for ſaid, before the ſaid W. lord M. the chief juſtice aforeſaid, at the return aforeſaid, in the ſaid E. F. on his own election, and by reaſon of the ſaid chief juſtice return'd with the ſaid P. from London aforeſaid to I aforeſaid, in ſaid county of Somerſet: And the ſaid P. in fact ſays, that by means of the premiſes he the ſaid P. was put to great labour and expence, and obliged to pay out and expend, and did lay out and expend a large ſum of money, to wit, the ſum of , in and about the carrying and conveying the ſaid L. I. from I aforeſaid to London aforeſaid, and from London aforeſaid to I aforeſaid, that is to ſay, at Weſtminſter aforeſaid, in ſaid county: And

2d Count. whereas alſo before and at the time of committing the grievance hereinafter next mentioned the ſaid E. F. then an infant, was under the care and cuſtody of the ſaid P. as a ſcholar in his ſaid ſchool, to be by the ſaid P. there educated and maintained, yet the ſaid defendant, well knowing the premiſes laſt aforeſaid, but contriving and wrongfully and injuriouſly intending to injure the ſaid P. and to put him to great and unneceſſary expence, afterwards, to wit, on the ſame, &c. at Weſtminſter aforeſaid, in the county of Middleſex aforeſaid, wrongfully and injuriouſly, and under the falſe pretence that E. F. R. *deceaſed, the father* of the ſaid E. F. an infant, had by his laſt will and teſtament diſpoſed

of the cuſtody and tuition of the ſaid E. F. an infant, to him the ſaid defendant, and alledging that he the ſaid defendant was deſirous of removing the ſaid E. F. the infant from the ſaid P.'s ſchool, and to place him in apprentice to ſome trade or profeſſion, proſecuted and ſued out, and cauſed to be proſecuted and ſued out of the court of our lord the king, before the king himſelf, at Weſtminſter aforeſaid, a certain other writ of *habeas corpus*, by which ſaid writ the ſaid P. was commanded [recite the writ *ut ſupra*], and that he ſhould have then and there the ſaid laſt-mentioned writ: And the ſaid defendant, further contriving and intending as aforeſaid (*ut ſupra* till], from London to F. aforeſaid, in the ſaid county of Somerſet, when in truth and in fact the ſaid L. F. deceaſed, did not in and by his laſt will and teſtament diſpoſe of the cuſtody and tuition of the ſaid E. F. the infant to the ſaid E. F. and when in truth and in fact the ſaid defendant well knew that the ſaid L. F. deceaſed, did not by his laſt will and teſtament diſpoſe of the cuſtody and tuition of the ſaid E. F. the infant of the ſaid L. F.: And the ſaid P. in fact ſays, that by means of the premiſes *laſt aforeſaid* [*ut ſupra*]: And whereas alſo before the committing the grievance next hereinafter mentioned the ſaid E. F. an infant, [as in firſt] as a ſcholar in his ſaid ſchool at F. aforeſaid to be by him *there* educated, &c. [as in firſt] care, and cuſtody of the ſaid P. therefor, &c. *unjuſtly and unlawfully* intending, &c. on the day and year firſt, &c. unjuſtly and unlawfully proſecuted and ſued, &c. to a certain other writ, &c. by which ſaid *laſt mentioned writ another* ſum, (the ſum of ſixty pounds), in and about, &c. from L. aforeſaid to F. aforeſaid, as laſt aforeſaid, &c.

3d Count ſame as the firſt, altering the words *wrongfully, &c.* to *unjuſtly and unlawfully*, and leaving out *without reaſonable cauſe*.

F. BULLER.

The inſtructions for the above were the falſe ſuggeſtions in defendant's affidavit, that E. F. deceaſed, did in and by his laſt will and teſtament in writing duly executed and attested ſaid F. believed nominated and appointed him truſtee for and on behalf of his two children, when in fact there was no atteſtation to the ſaid will, and which he muſt well know, as he himſelf took out adminiſtration with the will annexed, on the ſecond of February 176-, by means of which falſe ſuggeſtion it was preſumed the *habeas corpus* was granted.

*TORT to PERSONAL PROPERTY, AND OF A MIXED NATURE, DECEIT, AND WARRANTY.

MIDDLESEX, to wit. W. W. complains of A. G. and P. W. H. being, &c., for that whereas defendants heretofore, to wit, on, &c. at, &c. falſely and ſcandalouſly deceived the ſaid plaintiff, by then and there ſelling to him ſaid plaintiff a certain quantity of ſpirituous liquors called geneva as and for the quantity of two gallons, and by then and there warranting the ſame to be and contain in itſelf that quantity, when in truth and in fact the ſaid quantity of ſpirituous liquor ſo ſold and warranted as aforeſaid

Deceit in ſelling ſpirituous liquors by ſhort meaſure.

* With a bar.

at

at the time of the ſale and warranty thereof was not, nor did the ſame contain in itſelf the ſaid quantity of two gallons, but a much leſs quantity, to wit, the quantity of one gallon and ſeven pints and no more, as they the ſaid defendants well knew, to wit, at Weſtminſter aforeſaid, and for that, &c.

Declaration on the caſe upon *deceit and warranty in exchange of horſes*, and money paid by plaintiff.

FOR that whereas the ſaid plaintiff, on, &c. at, &c. bargained with ſaid defendant to exchange with ſaid defendant a certain mare of the ſaid plaintiff for a certain mare of ſaid defendant, and the ſaid defendant, then and there well knowing the ſaid mare of him ſaid defendant to be lame *and ſtrained in her back, and to have a certain diſeaſe or diſorder called the yellows*, and unſound, and not fit for uſe, by then and there falſely and fraudulently warranting the ſaid mare of him ſaid defendant to be ſound *in all reſpects*, then and there falſely and fraudulently exchanged the ſaid mare of him ſaid defendant with him the ſaid plaintiff, for the ſaid mare of the ſaid plaintiff and a large ſum of money, to wit, the ſum of, &c. then and there paid by plaintiff to the ſaid defendant, which ſaid mare of the ſaid defendant, at the time of the ſaid warranty and exchange thereof, was lame *and ſtrained in her back, and had a certain diſeaſe or diſorder called the yellows*, and was unſound, and not fit for uſe, and hath from thence hitherto ſo remained and continued, and ſtill doth ſo remain and continue, and ſo the plaintiff ſaith, that the ſaid defendant, on the ſaid, &c in the year aforeſaid, at, &c. aforeſaid, falſely and fraudulently deceived him ſaid plaintiff, to wit, at, &c. aforeſaid. [Add a ſecond Count, omitting what is in Italic] Damages, &c. Suit, &c.

Michaelmas Term, 2. Geo III.

Declaration on *deceit*, in not delivering the proper meaſure of coals.

CITY OF EXETER, to wit. Nathaniel Saunders complains of John Beckington, being, &c., for that whereas ſaid plaintiff, on the twentieth day of December 1759, and on divers other days and times between that day and the twenty-ſecond day of June 1761, at Exeter aforeſaid, in the county of the ſame city, bargained with the defendant to buy of him ſaid defendant divers quantities of coals, amounting in the whole to one hundred and twenty-eight quarters of coals, each quarter whereof to contain ſixteen buſhels of coals Wincheſter meaſure, he the ſaid defendant, on divers days and times in the time aforeſaid, at, &c. aforeſaid, for a large ſum of money, to wit, the ſum of ninety-ſeven pounds ten ſhillings of lawful, &c. falſely and fraudulently ſold and delivered to ſaid plaintiff divers quantities of coals, amounting in the whole to one thouſand and ſixty-four buſhels of coals Wincheſter meaſure and no more, and for one hundred and twenty-eight quarters of coals Wincheſter meaſure, whereby ſaid defendant then and there deceitfully and fraudulently deceived the ſaid plaintiff of three hundred and four buſhels of coals Wincheſter meaſure,

meaſure, to the value of ſeventeen pounds fifteen ſhillings and ſevenpence halfpenny of lawful, &c. [Two Counts more for other times and quantities of coals.] Concluſion. Whereupon ſaid plaintiff ſaith that he is injured, and hath ſuſtained damage to the value of fifty pounds, and therefore he brings ſuit, &c. Pledges, &c.

Michaelmas Term, 14 Geo. III.

CAMBRIDGESHIRE, to wit. William Parker complains of David Todd, being, &c. of a plea of treſpaſs on the caſe; for that whereas ſaid plaintiff, on the twenty fifth day of June 1773, to wit, at the Iſle of Ely, in the ſaid county, bargained with ſaid defendant to exchange with ſaid defendant a certain horſe, to wit, a grey gelding of ſaid plaintiff of a large value, to wit, of the value of ſeventeen pounds ſeventeen ſhillings for a certain horſe, to wit, a cheſnut gelding of ſaid defendant, and to pay alſo to the ſaid defendant a certain ſum of money, to wit, the ſum of five pounds five ſhillings, together with the ſaid gelding of the ſaid plaintiff, for the gelding of ſaid defendant (the ſaid gelding of ſaid plaintiff, and the ſaid ſum of five pounds five ſhillings by him to be paid to the ſaid defendant, being then and there a good and ſound price and valuable conſideration for a good and ſound gelding) to wit, at the Iſle of Ely aforeſaid, and the ſaid defendant then and there well knowing the ſaid gelding of him the ſaid defendant not to be able to ſwallow ſtraw, hay, and graſs, and to be unſound and unfit for uſe, by then and there falſely and fraudulently alledging and affirming that the ſaid gelding of him the ſaid defendant was ſound, for any thing he the defendant knew to the contrary, he ſaid defendant falſely and fraudulently exchanged the ſaid gelding of him the ſaid defendant with the ſaid plaintiff for the ſaid gelding of him ſaid plaintiff, and alſo for the ſaid ſum of money, to wit, the ſaid ſum of five pounds five ſhillings then and there paid by the ſaid plaintiff to the ſaid defendant, together with the ſaid gelding of the ſaid plaintiff ſo given in exchange for the ſaid gelding of the ſaid defendant as aforeſaid, which ſaid gelding of ſaid defendant, at the time of the exchange thereof, was not able to ſwallow ſtraw, hay, or graſs, and was unſound and unfit for uſe, and ſo from thence hitherto hath remained and continued, and ſtill doth ſo remain and continue, to wit, at the Iſle of Ely aforeſaid, in the county aforeſaid; and ſo the ſaid plaintiff ſaith, that the ſaid defendant, on the ſaid twenty-fifth day of June in the year aforeſaid, at the Iſle of Ely aforeſaid, in the county aforeſaid, falſely and fraudulently deceived him the ſaid plaintiff. And whereas ſaid plaintiff afterwards, to wit, on the ſame day and year aforeſaid, at, &c. aforeſaid, bargained with ſaid defendant to exchange with ſaid defendant a certain other gelding of him the ſaid plaintiff for a certain other gelding of ſaid defendant, and to pay to ſaid defendant on ſuch exchange a certain ſum of money, to wit, another ſum of five pounds five ſhillings; and the ſaid defendant then and there

Declaration on *deceit in the exchange of one horſe for another* and money, defendant knowing his to be unſound, and plaintiff's horſe and money being a valuable conſideration for a ſound horſe.

2d Count.

there well knowing the ſaid laſt mentioned gelding of him ſaid defendant to be damaged and unſound, to wit, by being unable to ſwallow ſtraw, hay, or graſs, then and there falſely and fraudulently exchanged his ſaid laſt-mentioned mare with the ſaid plaintiff as and for a ſound gelding, for any thing he ſaid defendant knew to the contrary, for his laſt mentioned gelding, and the ſaid ſum of five pounds five ſhillings, and then and there paid by the ſaid plaintiff to the ſaid defendant on that occaſion, the ſaid laſt-mentioned gelding of the ſaid plaintiff then and there being of a large value, to wit, of the value of ſeventeen pounds ſeventeen ſhillings, and the ſum of five pounds five ſhillings, being together a good and ſound price, and a good and valuable conſideration for a good and ſound gelding, which ſaid laſt-mentioned gelding of the ſaid defendant, at the time of the ſaid exchange thereof, was damaged and unſound, to wit, unable to ſwallow ſtraw, hay, or graſs, and ſo from thence hitherto hath remained and continued, and ſtill doth remain and continue, to wit at the Iſle of Ely aforeſaid, and ſo the ſaid plaintiff ſaith, that the ſaid defendant, on the twenty-fifth day of June, in the year, &c. aforeſaid, at the Iſle of Ely aforeſaid, in the county aforeſaid, falſely and fraudulently deceived him the ſaid plaintiff, to the ſaid plaintiff his damage of forty pounds, and therefore he brings ſuit, &c. Pledges, &c.

Trinity Term, 17. Geo. III.

Declaration in deceit, for ſelling plaintiff *unſound* ſheep, part of which died, and others are ſick.

MIDDLESEX, to wit John Harriſon complains of Stephen Maton; for that whereas he ſaid plaintiff heretofore, to wit, on the day of , A. D. , to wit, at Weſtminſter, in ſaid county of Middleſex, bargained with the ſaid defendant to bring divers *other* ewe ſheep, to wit, eighty nine *other* ewe ſheep and one *other* ram of ſaid defendant, and ſaid defendant then and there well knowing *divers, to wit, ſixty nine of the* ſaid ewe ſheep to be unſound and ill with "the ſaid" *a certain* diſeaſe called the rot, *and to be of no value*, by then and there falſely and fraudulently warranting all the ſaid ewe ſheep to be ſound and free from the rot, then and there falſely and fraudulently ſold the ſaid eighty-nine ewe ſheep and ſaid ram to ſaid plaintiff for a certain large ſum of money, to wit, the ſum of forty-nine pounds eight ſhillings, then and there paid by the ſaid plaintiff to the ſaid defendant for the ſame, which *ſaid part of the ſaid* ewe ſheep, *to wit, ſaid ſixty-nine of ſaid ewe ſheep* at the time of the ſaid warranty and ſale thereof were, *and each of them was* unſound and ill with the ſaid diſeaſe called, &c. and a part, to wit, "ſixty of them" *forty of ſaid eighty-nine of ſaid ewe ſheep* "fifty-nine of the other ſheep" ſo from thence hitherto have remained and continued, and ſtill do ſo remain and continue, and are of little or no value, and the ſaid reſidue of the ſaid ſixty nine ewe ſheep thereof, afterwards, to wit, on the firſt day of , A. D , died of ſaid diſeaſe called, &c. to wit, at, &c. aforeſaid, and ſo the ſaid plaintiff ſaith, that the ſaid defendant, on ſaid day of , A. D. aforeſaid, at, &c.

&c. aforeſaid, falſely and fraudulently deceived him ſaid plaintiff: And whereas, &c. [the 2d Count like the firſt, only leaving out what is in Italic, and inſerting what is between turned commas.] [The 3d Count like ſecond, leaving out what is in Italic, and taking what is between turned commas.] [The 4th Count like the third, only ſaying that one half of the ſheep were ill, and the other half died.] [5th Count, ſay, that defendant, knowing a part, to wit, twenty of the ſaid ewe ſheep, to be unſound, &c. and ill with, &c. by warranting all, &c. ſold, &c. a part of which ſaid eighty-nine ewe ſheep, to wit, twenty of ſaid ewe ſheep at the time of ſaid warranty, &c. were unſound, &c. with the ſaid diſeaſe called, &c. the ſame being an infectious diſeaſe, and ſo for a long time, to wit, for the ſpace of two months then next following, remained, &c. and then and there during that time laſt mentioned infected divers, to wit, forty others of ſaid live ſheep with ſaid diſeaſe, and they from thence hitherto have ſo remained and continued and ſtill do, &c. and all the ſaid ſheep ſo infected are of little value to ſaid plaintiff, to wit, at, &c.; and ſo, &c. Damages, &c. Suit, &c.

YORKSHIRE, to wit. J. S. complains of W. E. being in the cuſtody, &c.; for that whereas on the day of , in A. D. , at the caſtle of York, in the county aforeſaid, ſaid plaintiff bargained with ſaid defendant to buy of him ſaid defendant a certain parcel of wool, to wit, , which ſaid wool was then and there packed, bound, and tied up into divers, to wit, one hundred and twenty parcels, in the form and had the appearance of wool called fleece wool; and the ſaid defendant then and there well knowing that the ſaid wool was deceitfully packed, bound, and tied up, and that the middle or inſide of divers of the ſaid parcels thereof was not fleece wool, nor good or merchantable wool, but was wool of a much leſs value than fleece wool, and not good or merchantable wool, by then and there falſely and deceitfully warranting the ſaid wool, and every part thereof, to be fleece wool, and to be packed, bound, and tied up fairly and without deceit, and to be all good and merchantable, then and there falſely and deceitfully bargained and ſold all the ſaid wool to the ſaid plaintiff as and for good merchantable fleece wool packed, bound, and and tied up fairly, and without deceit, for a large ſum of money, to wit, for ſix ſhillings and ſixpence by the ſtone for each and every ſtone thereof, to be therefore paid, and afterwards there paid to the ſaid defendant for the ſame: And the ſaid plaintiff further ſaith, that a great part, to wit, one hundred of the ſaid parcels thereof, was not fleece wool, nor good or merchantable wool, but was then and there wool of a much leſs value than fleece wool not good or merchantable wool; and ſo the ſaid defendant, on the ſame day and year aforeſaid, at the caſtle of York aforeſaid, falſely, fraudulently, and deceitfully deceived the ſaid plaintiff: And whereas, &c. [Another Count laid at another day ſubſequent for ſixty ſtone only.]

Deceit in ſelling wool artfully packed, &c.

Declaration in deceit at the ſuit of merchants againſt their factor, for not delivering them gum which he had purchaſed for them, but withholding ſame under falſe pretences, and afterwards ſelling ſame, and conſpiring of the extra price, &c.

ANNE SCOTT and J. Scott complain of William Ket being, &c.; for that whereas long before and at the time of the committing of the grievance hereafter next mentioned, the plaintiffs were merchants, and the buſineſs and profeſſion of merchants did uſe, follow, and carry on at London, &c. aforeſaid: And whereas the ſaid plaintiffs, during all the time aforeſaid, were partners and joint dealers together in their buſineſs aforeſaid, to wit, at London, &c. aforeſaid: And whereas before and at the time of the committing of the grievance hereafter next mentioned, and before and long afterwards the ſaid defendant was a factor, and the buſineſs of a factor did, during all that time uſe and follow, to wit, at Liverpool, in the county of Lancaſter; and the ſaid plaintiffs being ſuch merchants and partners as aforeſaid, and the ſaid defendant ſo being ſuch factor as aforeſaid, they ſaid plaintiffs, whilſt they were ſuch merchants and partners as aforeſaid, and whilſt ſaid defendant was and acted as a factor as aforeſaid, to wit, on the day of , in the year, &c. to wit, at London, &c. aforeſaid, at the requeſt of ſaid defendant (by one John G. by his then broker and ſervant of the ſaid plaintiffs) employed and retained the ſaid defendant in the way of his buſineſs of a factor as aforeſaid, to buy for them the ſaid plaintiffs, as ſuch merchants, a certain quantity, to wit, fourteen tons of a certain gum called Senegal gum, otherwiſe gum Senegal, of a large value, to wit, of the value of one thouſand and ſeventy pounds, part thereof then being garbled, and the other part thereof ungarbled, but which was alſo to be garbled by the proprietors thereof at the rate following, to wit, all ſuch of the ſaid gum as then was or ſhould thereafter be garbled by the then proprietors, at the rate of five guineas for each and every one hundred weight, and ſo in proportion for a leſſer quantity than one hundred weight, and for the ſecond ſort the black and the duſt in proportion, or as it ſhould be agreed by and between ſaid defendant, as the factor of the ſaid plaintiffs, and the then proprietors of the ſaid gum, for certain commiſſion or reward to be therefore paid and allowed by the ſaid plaintiffs to the ſaid defendant, to wit, by the hands of the ſaid G. S. as the broker and ſervant of the ſaid plaintiffs; and the ſaid defendant being ſo retained and employed as the factor of the ſaid plaintiffs, in manner and form and for the purpoſe aforeſaid, afterwards, to wit, on the day and year aforeſaid, at London, &c. aforeſaid, accepted and took upon himſelf the ſuch retainer and employ, in order to buy the aforeſaid gum for the ſaid plaintiffs, and for their ſole advantage, and to act honeſtly in ſuch his employ, and duly diſcharge his duty therein: And the aforeſaid plaintiffs further ſay, that the ſaid defendant did thereupon afterwards, to wit, on the day and year aforeſaid, at London, &c. aforeſaid, as the factor of the ſaid plaintiffs, buy for the ſaid plaintiffs the ſaid gum at the rate and on the terms aforeſaid, to wit, that the then proprietors thereof ſhould garble all the ungarbled part of the ſaid gum, and that the ſaid plaintiffs ſhould pay at the aforeſaid rate of five guineas by the hundred weight, and ſo in proportion for a leſſer quantity than an hundred weight for the garbled

ninety ſhillings by the hundred weight for the ſecond beſt, and ſo in proportion, &c. ſeventy ſhillings by the hundred weight for the duſt, and ſo, &c. and twenty ſhillings by the hundred weight for the black, and ſo, &c.: And the ſaid plaintiffs further ſay, that the ſaid proprietors of the gum did afterwards, to wit, on the day and year laſt aforeſaid, at, &c. aforeſaid, garble all the ſaid gum, and that when the ſame was garbled there was a large quantity, to wit, twelve tons garbled, fourteen hundred weight ſecond beſt, thirteen hundred weight duſt, and thirteen hundred weight black: And the ſaid plaintiffs further ſay, that immediately after the buying thereof the price and value of gum did greatly riſe and was very much enhanced, inſomuch that by means thereof the ſaid gum ſo bought as aforeſaid was, before and at the time of the committing of the grievance hereafter next mentioned, worth a much larger ſum of money than the ſame was bought for, to wit, the ſum of two thouſand pounds, and that ſaid plaintiff could have ſold the ſame for ſuch laſt mentioned ſum if the ſaid defendant would have delivered the gum to the ſaid plaintiffs; yet the ſaid defendant, well knowing all and ſingular the premiſes aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud ſaid plaintiffs of the ſaid gum, and of the profit and advantage which he could and would have made of and by the ſame, he the ſaid defendant then, and after he had ſo purchaſed the ſaid gum at the rate aforeſaid for the ſaid plaintiffs, as their factor, in manner and form aforeſaid, and after all the ſaid gum had been garbled, to wit, on the day of , A. D. , at London, &c. aforeſaid, falſely and fraudulently pretended to the ſaid plaintiffs that the whole of the ſaid gum was not garbled, according to the pattern by him at firſt ſeen, nor according to the terms of his agreement with the original proprietors thereof, nor fit for him ſaid defendant to receive on account of the ſaid plaintiffs, nor merchantable, nor that he could *not* juſtly receive the ſame on their account, or not being of the value it ought to be, nor properly garbled, but unmerchantable and unfit for ſale at the reſpective rates and prices the ſaid plaintiffs were to pay for the ſame, and therefore he would not receive the ſame on their account, whereas in truth and in fact the ſaid gum was properly garbled; and whereas in truth and in fact ſaid defendant did receive the ſaid gum ſo garbled on account of the ſaid plaintiffs as his principals, and did afterwards, to wit, on the day and year laſt aforeſaid, clandeſtinely, falſely, and fraudulently ſell the ſaid gum for a much larger ſum of money than the price the ſaid plaintiffs were to pay for the ſame, but for a much leſs than the real and intrinſic value of the ſaid gum, to wit, for the ſum of one thouſand five hundred pounds as and for his own proper gum, and did falſely, fraudulently, and deceitfully convert to his own uſe the extra price for which he ſo ſold the ſaid gum without the knowledge, leave, licence, or conſent of the ſaid plaintiffs, or of either of them, whereby the ſaid plaintiffs were fraudulently deprived of all the benefit and advantage which would otherwiſe have accrued unto the ſaid plaintiff by the buying and

reſelling of the ſaid gum, to wit, at L. &c. aforeſaid; and ſo the ſaid plaintiffs ſay, that the ſaid defendant, on the day and year laſt aforeſaid, at L. &c. aforeſaid, falſely and fraudulently deceived the ſaid plaintiffs.

TROVER.

Declaration in trover for goods and chattels.

LONDON, to wit. J. S. complains of D. S.; for that whereas ſaid plaintiff, on, &c. at, &c. was poſſeſſed of certain goods and chattels, to wit, &c. [ſet out the goods] of a large value (*a*), to wit, of the value of pounds, as of his own proper goods and chattels; and being ſo poſſeſſed thereof, he the ſaid plaintiff afterwards, to wit, on the ſame day and year aforeſaid, at, &c. aforeſaid, caſually loſt the ſame goods and chattels out of his hands and poſſeſſion; which ſaid goods and chattels afterwards, to wit, on the day and year aforeſaid, at, &c. aforeſaid, came into the hands and poſſeſſion of ſaid defendant, who found the ſame; yet ſaid defendant, well knowing the goods and chattels to be the goods and chattels of ſaid plaintiff, and of right to belong and appertain unto him the ſaid plaintiff, but contriving, &c. to deceive and defraud ſaid plaintiff in this behalf, hath not as yet delivered the ſaid goods and chattels, or any or either of them, or any part thereof to ſaid plaintiff, although often requeſted ſo to do, but on the contrary thereof he ſaid defendant afterwards, to wit, on, &c. at, &c. aforeſaid, converted and diſpoſed of ſaid goods and chattels to his own uſe, to the damage of the ſaid plaintiff of pounds, for which he brings his ſuit, &c. [If in B R. inſert pledges, &c]

(*a*) If the chattel be a dead one, you alledge it to be of the *value*, &c. but if it is a living one, you ſay of the *price*, &c. Cro Jac. 130.

Declaration in trover for a *bill of exchange* accepted by defendant.

LONDON, to wit. T. H. complains of R. S.; for that whereas he ſaid plaintiff, on, &c. at, &c. was poſſeſſed of and in a certain bill of exchange in writing, that is to ſay, a certain bill of exchange drawn by one G. S. on and accepted by him ſaid defendant, whereby ſaid G. S. required ſaid defendant to pay at a certain time now paſt to him ſaid G. S. or his order thirty pounds for value received, and which ſaid bill of exchange was indorſed by ſaid G. S. to one J. C. and by ſaid J. C. indorſed to ſaid plaintiff the ſaid bill of exchange, being of a large *value*, to wit, of the value of thirty pounds, as of his the ſaid plaintiffs own proper bill of exchange; and being ſo thereof poſſeſſed, he the ſaid plaintiff afterwards, to wit, on, &c. at, &c. aforeſaid, caſually loſt ſaid bill of exchange out of his hands and poſſeſſion; which ſaid bill of exchange afterwards, to wit, on the day and year aforeſaid, at, &c. aforeſaid, came to the hands and poſſeſſion of the ſaid defendant

dant who found the ſame; yet the ſaid defendant, well knowing the ſaid bill of exchange to be the bill of exchange of ſaid plaintiff, and of right to belong and appertain to ſaid plaintiff, but contriving, &c. to deceive, &c. ſaid plaintiff in this behalf, hath not as yet delivered ſaid bill of exchange to ſaid plaintiff, although often requeſted ſo to do, but on the contrary thereof he the ſaid defendant afterwards, to wit, on, &c. at, &c. aforeſaid, converted and diſpoſed of ſaid bill of exchange to his own uſe, to the ſaid plaintiff his damage of pounds, for which he brings his ſuit, &c.

FOR that whereas ſaid plaintiff, on, &c. at, &c. was poſſeſſed of a certain writing obligatory, commonly called a bond, ſealed with the ſeal of one G. H. (*a*), whereby the ſaid G. H. had bound himſelf to ſaid plaintiff in the penalty of one hundred pounds, and then being in full, and of the value of one hundred pounds as of his own proper bond, and being ſo poſſeſſed thereof, &c. &c. [as before.] *Trover for a bond.*

(*a*) It is not neceſſary to ſet forth the date, nor is it prudent, for fear of a miſtake, which would be fatal, 4. Bac. Abr. 28.

FOR that whereas ſaid plaintiff, on, &c. at, &c. was poſſeſſed of a certain paper writing, purporting to be a draft or bill, or order in writing before then drawn and made by one G. H. on one J. H. and whereby the ſaid G. H requeſted the ſaid J. H to pay to ſaid plaintiff or bearer on demand the ſum of one hundred pounds for account of ſaid G. H. and then being in full force and of the value of one hundred pounds, as of his own draft, bill, or order; and being ſo poſſeſſed thereof, &c. [as before.] *Trover for a draft on a banker.*

THAT whereas ſaid plaintiff, on, &c. at, &c. was lawfully poſſeſſed of certain fiſh, to wit, five hundred brace of pike, five hundred brace of perch, five hundred brace of trout, five hundred brace of carp, and five hundred brace of tench, of a large value, to wit, of the value of twenty pounds, as of his own proper fiſh, and being ſo thereof poſſeſſed, &c. [as before.] *Trover for fiſh.*

WILTSHIRE, to wit. Richard Eyres, aſſignee of the eſtate of Richard Nicholls, a bankrupt, within the true intent and meaning of the ſeveral ſtatutes made and now in force concerning bankrupts, ſome or one of them, complains of John Crouch being in the cuſtody, &c. in a plea of treſpaſs on the caſe; for that whereas Richard Nicholls, before he became a bankrupt, to wit, on the day of , A. D , at Saliſbury, in the ſaid county of Wilts, was poſſeſſed of certain cattle, poultry, goods, and chattels, to *Declaration in trover at the ſuit of aſſignee of a bankrupt.*

1ſt Count, on a trover, and conver- time of bankrupt.

2d Count, ſame, in time of aſſignee.

to wit, &c. of a large price and value, to wit, of the price and value of two hundred and ſeventy-five pounds of lawful, &c. as of his own proper cattle, poultry, goods, and chattels; and being ſo poſſeſſed, &c. loſt, &c. yet, &c. did not at any time *before* the ſaid R N. became a bankrupt as aforeſaid, deliver, &c. although, &c. but on the contrary, &c. afterwards and before the ſaid R. N. became ſuch bankrupt as aforeſaid, to wit, on, &c at, &c. converted, &c.: And whereas ſaid plaintiff, as ſuch aſſignee as aforeſaid, afterwards, to wit, on, &c. at, &c. aforeſaid, was poſſeſſed, &c. [as in common declarations in trover] to the damage of ſaid plaintiff, as ſuch aſſignee as aforeſaid, of pounds. Suit, &c. Pledges, &c. V. LAWES.

Declaration in trover for a *leaſe* at the ſuit of the aſſignee of leſſee.

MIDDLESEX, to wit. James Toines, late of, &c. yeoman and Peter James Bennett, late of, &c. gauze weaver, were attached to anſwer William Calverhouſe in a plea of treſpaſs on the caſe; and thereupon ſaid plaintiff, by A. B. his attorney, complains; that whereas ſaid plaintiff heretofore, to wit, on the day of , A. D. 1782, at Weſtminſter aforeſaid, in ſaid county of Middleſex, was lawfully poſſeſſed of a certain indenture of leaſe, and a certain aſſignment thereof theretofore made to him ſaid plaintiff by one R. Calverhouſe therein mentioned, and duly indorſed on ſaid indenture of leaſe, which bears date the third day of July 1781, and is of a certain meſſuage or dwelling-houſe ſituate in Sidney's alley, Leiceſter fields, in ſaid county of Middleſex, by ſaid indenture demiſed to ſaid Richard Calverhouſe, by one William Hayhurſt therein mentioned, for a certain term to a term of years which is ſtill unexpired, and of a certain other indenture of leaſe, theretofore made by ſaid William Hayhurſt to ſaid Richard Calverhouſe, and to him by a certain indorſement thereon made, duly aſſigned to ſaid plaintiff of certain premiſes therein mentioned for a term of years, which is ſtill ſubſiſting and unexpired, as of his the ſaid plaintiff's own proper indentures of leaſe and aſſignment thereof reſpectively, and being ſo thereof poſſeſſed, he the ſaid plaintiff afterwards, to wit, on the day and year aforeſaid, at, &c. aforeſaid, caſually loſt the ſame, which were then and there of a large value, to wit, of the value of three hundred pounds out of his hands and poſſeſſion, and they afterwards, to wit, on the day and year aforeſaid, at, &c. aforeſaid, came to the hands and poſſeſſion of ſaid defendants, yet ſaid defendants, well knowing ſaid indentures of leaſe and aſſignments to be the indentures and aſſignments of ſaid plaintiff, and to him of right to belong and appertain, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud him ſaid plaintiff in this behalf, have not, nor hath either of them to ſaid plaintiff delivered, &c. to ſaid plaintiff, although often requeſted ſo to do, but on the contrary afterwards, to wit, on the twenty ſecond day of January, A. D. 1783, at, &c aforeſaid, converted and diſpoſed thereof to their own uſe, wherefore ſaid plaintiff ſaith that he is injured, and hath

hath ſuſtained damage to the value of three hundred pounds, for which he brings his ſuit, &c. V. LAWES.

Hilary Term, 31. Geo. III.

Trover for American certificates againſt an attorney.

LONDON, to wit. Richard Smith, eſquire, complains of John Exley, gentleman, one of the *attornies* of our lord the now king, before the king himſelf preſent here in court in his own proper perſon; for that whereas the ſaid R. heretofore, to wit, on the thirtieth of December, A. D. 1786, at the pariſh of St. Mary le Bow, in the ward of Cheap, in L. aforeſaid, was lawfully poſſeſſed as of his own property of divers, to wit, four inſtruments in writing reſpectively, purporting to be certificates from the regiſter office of the treaſury of the United States of America, bearing date the day and year aforeſaid, and ſeverally certifying that there was then due from the ſaid United States to the ſaid John the ſum of five thouſand dollars, bearing intereſt at ſix pounds *per cent per annum* from the firſt of January 1785, and alſo of four other certificates for ſtock in the public funds of the ſaid United States, to the amount in the whole of twenty thouſand dollars, beſides intereſt thereon; which ſaid ſeveral inſtruments and certificates, on the ſaid thirtieth of December A. D. 1786 aforeſaid, and from thence until the converſion thereof by the ſaid John as hereinafter mentioned, were reſpectively in full force and of the value of eight thouſand pounds of lawful, &c. to wit, at L. aforeſaid, in the pariſh and ward aforeſaid; and the ſaid Richard being ſo thereof poſſeſſed afterwards, to wit, on the day and year laſt aforeſaid, at L. &c. aforeſaid, caſually loſt the ſaid ſeveral inſtruments and certificates out of his cuſtody; and the ſame afterwards, to wit, on the day and year laſt aforeſaid, there came to the hands and poſſeſſion of the ſaid John by finding; yet the ſaid John, well knowing the ſaid inſtruments and certificates to be the property of the ſaid Richard, and of right to belong and appertain to him, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid Richard in this behalf, hath not (although often requeſted) delivered the ſaid ſeveral inſtruments and certificates or any or either of them to the ſaid Richard, but on the contrary thereof he the ſaid John afterwards, to wit, on the twenty-third of January, A. D. 1790, at L. aforeſaid, in the pariſh and ward aforeſaid, converted and diſpoſed of the ſame to his own uſe, to the damage of the ſaid Richard of eight thouſand pounds, and therefore he prays relief, &c. Pledges, &c. S. MARRYAT.

If this cauſe goes on to iſſue, the plaintiff muſt give the defendant notice to produce the certificates in queſtion at the trial, in order to render parol evidence of them admiſſible. Before he proceeds in the cauſe, however, it will be material for him to conſider whether he can eſtabliſh the facts of his caſe in proof, without reſorting to a court of equity for a diſcovery; becauſe, if for want of evidence at law, he ſhould hereafter be obliged to file a bill, he will of courſe be put to his election, in which court to proceed, and muſt pay the coſts of the proceedings in the court he abandons. S. MARRYAT.

Michaelmas Term, 30. Geo. III.

Trover against assignees of a bankrupt, to recover monies, notes, and bills, which were received to bankrupt to take up bankrupt's acceptances for plaintiff, which he did not do, but therewith satisfied his own creditors, then committed an act of bankruptcy, and these identical monies, &c. were seized under the commission.

LONDON, to wit. William Juſtin complains of John Gregory and William Ward being, &c.; for that whereas the ſaid William Juſtin heretofore, to wit, on the firſt of Auguſt, A. D. 1789, at the pariſh of St. Mary-le-bow, in the ward of Cheap, in L. aforeſaid, was lawfully poſſeſſed, as of his own property, of the ſum of four hundred and ſeventy-four pounds twelve ſhillings in monies numbered, and of two certain promiſſory notes of the governors and company of the Bank of England, commonly called bank notes, for payment of the ſeveral ſums of fifty pounds and ten pounds on demand to the reſpective bearers thereof, and alſo of divers bills of exchange reſpectively made according to the uſage and cuſtom of merchants, that is to ſay, a certain bill of exchange for the ſum of one hundred and fifty pounds, drawn by the ſaid William Juſtin upon one Richard Lloyd, payable to one William Stevens or order; a certain other bill of exchange for the ſum of forty-nine pounds, drawn by certain perſons trading under the firm of Smalley and Co. upon one Mr. Mort, payable to the ſaid W. J. or order; a certain other bill, &c. &c. &c. [ſtating many other bills *ut ſupra*] which ſaid ſeveral notes and bills of exchange reſpectively were then and there in full force and of a large value, to wit, the value in the whole of pounds; and being ſo poſſeſſed thereof, the ſaid W. J. afterwards, to wit, on the day and year aforeſaid, at L. aforeſaid, in the pariſh and ward aforeſaid, caſually loſt the ſaid monies, notes, and bills of exchange out of his cuſtody and poſſeſſion; and the ſame afterwards, to wit, on the day and year aforeſaid, at L. aforeſaid, in the pariſh and ward aforeſaid, came to the hands and poſſeſſion of the ſaid John Gregory and William Ward by finding; yet the ſaid John Gregory and William Ward well knowing the ſaid monies, notes, and bills of exchange, to be the property of the ſaid W. J. and of right to belong and appertain to him, but contriving and fraudulently intending craftily and ſubtilly to deceive and injure the ſaid W. J. in this behalf, have not, nor hath either of them (although often requeſted) delivered the ſaid monies, notes, and bills of exchange, or any part thereof to the ſaid W. J. but have, and each of them hath hitherto wholly refuſed ſo to do, and on the contrary afterwards, to wit, on the day of , in the year aforeſaid [the day of the demand on which the action is brought] at L. aforeſaid, in the pariſh and ward aforeſaid, converted and diſpoſed thereof to their own uſe, to the damage of the ſaid W. J. of pounds, and therefore he brings ſuit, &c. Pledges, &c. S. MARRYAT.

CASE. The plaintiff, W. Juſtin, a cotton manufacturer in Lancaſhire, ſold goods to one William Stevens, a mercer, of London, and was alſo in the habit of drawing bills for his own accommodation on Stevens, who accepted them, and was always remitted caſh or bills by Juſtin in time to anſwer the acceptances. The bill connection was diſtinct from the account between the parties for the goods ſold, and Stevens acted therein as agent for Juſtin, and truſtee for what he might receive from him. In July there were many bills running on Stevens, and the bills, and each for which the action is brought, were then remitted to him to anſwer

anſwer the acceptances. Inſtead of applying the caſh and bills in payment of Juſtin's draft, S paid away a great part of the caſh, and ſome of the bills, to ſatisfy his own creditors. The reſt of the bills and about eighty pounds of the identical caſh remitted by Juſtin were remaining in his hands on the thirtieth of July, when he committed an act of bankruptcy, but were ſeized by the meſſenger under the commiſſion, and afterwards delivered to defendants, his aſſignees. S paid no part of his acceptances, and Juſtin took up the greater part of them At the time of his failure, S was indebted to Juſtin for goods ſold, &c. upwards of one thouſand four hundred pounds, excluſive of the bills and money ſeized by the meſſenger A demand in writing of the bills and money was ſerved on defendants, the aſſignees, together with an offer by Juſtin to indemnify Stevens's eſtate againſt all acceptances upon his account, and upon their refuſal to deliver up the bills and caſh the above act on was brought

OPINION. Under the circumſtances ſtated in the inſtructions, it is perfectly clear that the bills remitted by the plaintiff to S and the caſh likewiſe, if diſtinguiſhable, that remained ſpecifically in Steven's hands at the time of his bankruptcy, belong to the plaintiff, and not to the aſſignees, and I ſee no reaſon why they ſhould not be recoverable in an action of trover, as well as by a petition to the great ſeal But in this caſe it appears to me, that there is not at preſent an objection to the plaintiff's obtaining the property in queſtion, by either action or petition, unleſs he has taken up the whole of Stevens's acceptances on his account, which I collect from the inſtructions he has not yet done: for I doubt whether a perſon, who like the plaintiff here, has a general property of the ſubject now of diſpute, can maintain trover againſt one who has a ſpecial property in it, as the bankrupt had for the purpoſe of diſcharging his own acceptances, until the ſpecial purpoſe is completely at an end, and even a court of chancery will not order bills remitted to a bankrupt to be delivered up before payment of thoſe they were meant to provide for. I therefore adviſe the plaintiff immediately to take up ſuch of Steven's acceptances for him as are ſtill outſtanding, and then to repeat the demand that has been made, only ſtating that he has actually taken up the bills, which may be ſhewn to the aſſignees, inſtead of offering them an indemnity againſt them; after which he may deliver this declaration entituled of a day, ſubſequent to the ſecond demand without ſuing a new writ If, however, the plaintiff's demand upon Stevens exceeds the amount of Stevens's outſtanding acceptances, and has not been proved under the commiſſion, I think the plaintiff is not abſolutely bound to take them up as a preliminary to his action, although I would recommend it to him to do ſo, if he can conveniently accompliſh it.

S. MARRYAT.

S.C. as reported in 2. Ves. 582.

Foſter v. Bonner, Cowp. 454.

1. Atk 240. Zincke v. Walker, 2. Blac 1

LANCASHIRE, to wit. Joſeph Whitridge, Philip Horton, and William Hope, aſſignees of the eſtate and effects of Thomas Pearſon, a bankrupt, according to the form of the ſeveral ſtatutes made and now in force concerning bankrupts, complain of William Gregſon, John Gregſon, James Gregſon, Thomas Parke, and Thomas Marland, being, &c.; *for that* "and" whereas the ſaid *Thomas P. before he became bankrupt*, "Joſeph Philip and William Hope, aſſignees as aforeſaid heretofore," to wit, on the "ſaid" twenty-eighth of March, in the year *of Our Lord* 1789 "aforeſaid" at, &c. *in the county palatine of Lancaſter* "aforeſaid," was "were" lawfully poſſeſſed of the "ſeveral other" goods and chattels hereinafter *next* mentioned, that is to ſay, one thouſand two hundred yards of ſattin, one hundred yards of ſatinett, five hundred yards of florentine, fifty yards of tabby, one hundred and fifty yards of armozeen, one hundred yards of ducape, four thouſand yards of luteſtring, one thouſand yards of mode, two hundred yards of perſian, five thouſand yards of other ſilk, one

Trover for goods by aſſignees of a bankrupt.

thouſand two hundred yards of bombazeen, two thouſand yards of broad cloth, three hundred yards of kerſeymere, two thouſand yards of othe. woollen cloth, one hundred yards of velvet, two hundred yards of velveret, one hundred yards of thickſet, three hundred yards of corderoy, three hundred yards of linſey wolſey, one hundred yards of everlaſting, two hundred yards of princes ſtuff, two thouſand yards of other ſtuff, one thouſand yards of flannel, five thouſand yards of linen, one hundred pieces of nankeen, fifty pieces of earning, fifty pounds weight of ſilk twiſt, fifty pounds weight of other ſilk, and one hundred pounds weight of thread, of a large value, to wit, the value of "other" three thouſand pounds of "like" lawful money *of Great Britain* as of *his* "their" own proper goods and chattels; and being ſo poſſeſſed thereof, *he* "they" the ſaid *Thomas Pearſon*, "Joſeph Phillip, and William Hope" afterwards, to wit, on the day and year "laſt" aforeſaid, at, &c. aforeſaid, caſually loſt the ſame out of *his* "their" hands and poſſeſſion; and the ſaid "laſt-mentioned" goods and chattels afterwards, to wit, on the day and year "laſt" aforeſaid, there came to the cuſtody and poſſeſſion of the ſaid William G. John J. Thomas P. and Thomas Mailand by finding, yet the ſaid William G. John J. Thomas P. and T. M. well knowing the ſaid "laſt-mentioned" goods and chattels to be the property of the ſaid *Thomas Pearſon before he became a bankrupt*, "Joſeph Phillips and William Hope," and of right to belong *and appertain to the ſaid Joſeph Phillips and William Hope* "to them," as aſſignees as aforeſaid *after the bankruptcy of the ſaid Thomas Pearſon*, but contriving and fraudulently intending craftily and ſubtilly to deceive and injure *the ſaid Thomas Pearſon before he became bankrupt, and* the ſaid Joſeph P. and William H. *ſince the ſaid bankruptcy* in this behalf, have not (although often requeſted) delivered the ſaid "laſt-mentioned" goods and chattels, or any of them, *either to the ſaid Thomas P. before he became a bankrupt, or* to the ſaid Joſeph P. and William H *ſince the ſaid bankruptcy*, but have wholly refuſed and neglected ſo to do, and on the contrary thereof afterwards, *and after the ſaid bankruptcy*, to wit, on the "ſaid" twenty-fourth day of July A. D. aforeſaid, at, &c aforeſaid, converted and diſpoſed thereof to their own uſe, to the damage of the ſaid Joſeph P. and William H. as aforeſaid of three thouſand pounds; and therefore they bring ſuit, &c. Pledges, &c.

Declaration in trover in B R. in the ſuit of a husband and wife adminiſtrating during the minority of an infant; with an underwrought, that the infant is yet a minor under the age of twenty-one years.

Hilary Term, 30. Geo. III.

LANCASHIRE, to wit. J. O. and Helen his wife, adminiſtratrix of all and ſingular the goods, chattels, and credits which were of J. O. deceaſed, at the time of his death, who died inteſtate, for the uſe of L. O. a minor, the natural and lawful child, and only next of kin of the ſaid J. O. during the minority of the ſaid L. O. complains of H. K. being, &c.; for that whereas the ſaid J. O. heretofore, to wit, in his lifetime, to wit, on, &c. at, &c. in, &c. was poſſeſſed of divers goods and chattels, to wit, eight chairs, &c. of a large value, to wit, of the value of twenty pounds

pounds of lawful money of Great Britain in the whole, as of his own proper goods and chattels; and being ſo poſſeſſed thereof, he the ſaid J. O. afterwards in his lifetime, to wit, on, &c. at, &c. in, &c. loſt the ſame goods and chattels out of his hands and poſſeſſion; which ſaid goods and chattels afterwards, in the lifetime of the ſaid J. O. to wit, on, &c. at &c. came by finding to the hands of the ſaid defendant; yet the ſaid defendant, well knowing the ſaid goods and chattels to be the proper goods and chattels of the ſaid J. O. and of right to belong to and appertain to him, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid J. O. in his lifetime, did not deliver the ſaid goods and chattels, or any or either of them, or any part thereof to the ſaid J. O. although often requeſted; but the ſaid defendants afterwards, in the lifetime of the ſaid J. O. to wit, on, &c. at, &c. in, &c. converted and diſpoſed of the ſaid goods and chattels to his own uſe: And whereas the ſaid J. O. heretofore, in his lifetime, to wit, on, &c. at, &c. was poſſeſſed of divers other goods and chattels, to wit, eight, &c. of a large value, to wit, of the value of other twenty pounds of like lawful money, as of his own proper goods and chattels, and being ſo poſſeſſed thereof, he the ſaid J. O. afterwards in his lifetime, to wit, on, &c. at, &c. loſt the ſame goods and chattels out of his hands and poſſeſſion; which ſaid goods and chattels afterwards, in the lifetime of the ſaid J. O. to wit, on, &c. at, &c. in, &c. came by finding into the hands and poſſeſſion of the ſaid defendant, yet the ſaid defendant, well knowing the ſaid goods and chattels to have been the proper goods and chattels of the ſaid J. O. in his lifetime, and of right to belong and appertain to the ſaid J. S. and H. his wife, as ſuch adminiſtratrix as aforeſaid after the death of the ſaid J. O. but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid J. O. in his lifetime; and the ſaid J. S. and H. his wife, as ſuch adminiſtratrix as aforeſaid after the death of the ſaid J. O in this behalf (*to which ſaid Helen, the wife* of the ſaid J. S. the teſtatrix and curatrix, lawfully aſſigned of the ſaid L. O. a minor, adminiſtration of all and ſingular of the goods, chattels, and credits of the ſaid J. O. deceaſed, at the time of his death, for the uſe, and during the minority of the ſaid L. O. by J. B. clerk, maſter of arts, vicar general and official principal to the right reverend father in God William, by Divine Permiſſion, lord biſhop of Cheſter, to whom the granting of adminiſtration in this caſe belonged after the death of the ſaid J. O. to wit, on, &c. at, &c in, &c. was duly committed) did not deliver the ſaid goods and chattels to the ſaid J. O in his lifetime, nor hath he as yet (although often requeſted) delivered the ſame to the ſaid J. S. and H. his wife, as adminiſtratrix as aforeſaid, or to either of them ſince the death of the ſaid J. O. but the ſaid defendant, after the death of the ſaid J. O and after the granting the ſaid adminiſtration in form aforeſaid, to wit, on, &c. at, &c. in, &c. converted and diſpoſed of the ſaid goods and chattels to his own uſe: *And the ſaid* J. S. and H. his wife avers, that the ſaid L. O. in the ſaid adminiſ-

2d Count, for converſion in the time of adminiſtratrix.

Vide 1. Ld. Raym 654. 4th Ed. Oxley v. Williams.

adminiſtration mentioned is yet a minor under the *age of twenty-one years* (*a*), to wit, at, &c. in, &c. to the damage of the ſaid J. and H, as ſhe is ſuch adminiſtratrix as aforeſaid, of fifty pounds; and therefore they bring their ſuit, and they bring into court here the letters of adminiſtration of the ſaid vicar general of the ſaid lord biſhop, which ſufficiently prove the granting of the ſaid adminiſtration to the ſaid H. the wife of the ſaid J. in form aforeſaid, the date whereof is the day and year in that behalf above-mentioned. T. BARROW.

(*a*) This averment is good, becauſe the adminiſtration was during the minority of L. O who was only entitled to the adminiſtration, 1 Lord Raym 667, but if the father had made a will, and left the ſame executrix, it would have been bad, for it ought then to have been *ſeventeen* inſtead of *twenty one* years adjudged upon demurrer, Piggott v Gaſcoynett, Cro Eliz 602, Beal v Simpſon, 1 Lord Raym 409. 4th Ed, but there ſaid it is cured by verdict per Treby juſtice, and is waived by pleading over *per tot cur* Vide the authorities there cited. T. BARROW.

TORTS OF A MIXED NATURE, AND FOR NONFEASANCE—MISFEASANCE.

Declaration for ſeducing &c. and delivering up an articled apprentice, &c.

LANCASHIRE, to wit. J B complains of T R being, &c.; for that whereas the ſaid J. B. on, &c at, &c in, &c. retained in his ſervice one W. B. to ſerve him the ſaid A. B. in certain lawful affairs and buſineſſes of him the ſaid J. B for the ſpace of three years from thence next enſuing; nevertheleſs the ſaid T. R. well knowing the premiſes, but wrongfully and injuriouſly contriving and maliciouſly intending wholly to deprive the ſaid J. B. of the ſervice of the ſaid William, and of all the benefit, profit, and advantage which would have accrued to him the ſaid James from ſuch ſervice of the ſaid W. B all the time aforeſaid afterwards, to wit, on, &c. without the licence and conſent, and againſt the will of the ſaid J. B. *hired and took* (1) the ſaid William, ſo being retained as aforeſaid, into the ſervice of him the ſaid T. R. and kept and detained the ſaid W. B in the ſervice of him the ſaid T. R. for a long ſpace of time, to wit, continually from that time hitherto, that is to ſay, at, &c, and the ſaid J. B. hath not, although often requeſted, delivered up the ſaid William to the ſaid J B. but to deliver up the ſaid W. B. to the ſaid J. B. hath hitherto altogether refuſed, and ſtill doth refuſe; by reaſon whereof the ſaid J. B. hath loſt not only the ſervice of the ſaid W. B. during all the time laſt mentioned, but alſo divers great benefits, profits, and advantages which would have accrued to the ſaid J. B. from the ſaid W. B. during all that time, to wit, at, &c. And whereas alſo the ſaid James afterwards, to wit, on, &c. retained in his ſervice a certain other W. B. to ſerve him the ſaid J. B. in certain lawful affairs and buſineſſes of him the ſaid J. B. for the ſpace of three years then next enſuing: And whereas alſo the ſaid

(1) "kept and detained"

ſaid laſt-mentioned W. B. afterwards, to wit, on, &c. at, &c. had, without the licence or conſent, and againſt the will of the ſaid James, hired himſelf unto and entered into the ſervice of the ſaid Thomas; nevertheleſs, the ſaid Thomas, well knowing the premiſes, but contriving, &c. [finiſh this Count ſame as laſt, omitting the words in Italic, and inſerting in lieu thereof what is in the margin]: And whereas alſo the ſaid J. afterwards, to wit, on, &c. had retained, &c. then next enſuing, and by reaſon thereof the ſaid W. B. had then and there entered into the ſervice of the ſaid J. B. and had been diligently occupied and employed in the ſaid ſervice of the ſaid James for a long ſpace of time, to wit, for the ſpace of three days, by reaſon whereof the ſaid James had been put to great trouble and expence of his monies, that is to ſay, to the expence of three pounds, in and about the ſaid laſt-mentioned W. B.; nevertheleſs the ſaid T. R. well, &c. but, &c. the ſaid James of the reſidue of the ſervice of the ſaid W. B. and of all the benefit, profit, and advantage which would have accrued therefrom to him the ſaid James afterwards, to wit, on, &c. enticed and procured the ſaid laſt-mentioned W. B. ſo being in the ſervice of the ſaid J. B. as aforeſaid, to quit and withdraw himſelf from his ſaid ſervice, by reaſon whereof the ſaid laſt-mentioned W. B. afterwards, to wit, on, &c. at, &c without the licence and conſent, and againſt the will of the ſaid James, quitted and withdrew himſelf from his ſaid ſervice; and the ſaid T. R. well knowing the premiſes, but contriving, &c. the ſaid J. B. in this behalf, afterwards, on, &c. at, &c. without the licence and conſent, and againſt the will of the ſaid J. B. hired and took the ſaid laſt-mentioned W. B. ſo being the ſervant of the ſaid James, into the ſervice of him the ſaid T. R. and kept and detained the ſame W. B. in the ſervice of him the ſaid T. R. for a long ſpace of time, to wit, continually from that time hitherto, to wit, at, &c.; and the ſaid T. R. although often requeſted, hath not delivered up, &c. &c. [as before]. Damages five hundred pounds.

V. LAWES.

31 Comm.

SUFFOLK, to wit. William Large, late of Brandon, otherwiſe Brandon Ferry, in the ſaid county of Suffolk, innholder, was attached to anſwer unto John King, in a plea of treſpaſs on the caſe; and thereupon the ſaid John, by William Fuller, his attorney, complains *that*, "and" whereas the ſaid John, before the committing of the ſeveral grievances in this Count mentioned, to wit, on the "ſaid" thirtieth of July, in the year *of Our Lord* 1775 "aforeſaid," at Brandon "aforeſaid, *in the ſaid county of &c.* was, and from thence hitherto hath been, and ſtill is, ſeiſed in his demeſne as of fee of and in a certain "other" *ancient and* public, "and accuſtomed" inn, "with the appurtenances," and called or known by the name or ſign of the White Hart, *with the appurtenances*,

Declaration in tort, for misfeasance in holding over after notice not to do ſo, and not delivering up poſſeſſion to the end of the demiſe, whereby plaintiff loſt the benefit of a contract he had made with another perſon letting the premiſes, &c.

was a public houſe, at an improved rent; and for maliciouſly withdrawing cuſtomers from his inn to another inn during the time he held over the former inn, and opening a new inn ſtrongly oppoſed.

houſes,

houſes, ſtables, houſes, outhouſes, and other edifices and buildings, yard, garden, and orchard, and all other the appurtenances thereunto belonging; and being ſo ſeiſed he the ſaid John, on the ſaid thirtieth of July, A. D. 1775 aforeſaid, at B. aforeſaid, demiſed the ſaid "laſt-mentioned" inn *and other the premiſes aforeſaid, together with the uſe of a chamber over a certain malt-houſe near adjoining to the ſaid premiſes*, with the appurtenances, (except "and reſerved" as in the ſaid demiſe thereof is *excepted* "mentioned") unto the ſaid William Large, to hold the ſame to him the ſaid William L. for the term of ſeven years from the "ſaid" fifth day of "the ſaid" July A. D. 1775 "aforeſaid," at and under the yearly rent of thirty-one pounds ten ſhillings; by virtue of which ſaid "laſt-mentioned" demiſe the ſaid William L. after the making thereof, and before the committing of the grievances "hereafter" in this Count mentioned, entered into, and became and was poſſeſſed of the ſaid "laſt-mentioned" inn, *and the premiſes ſo to him demiſed as aforeſaid*, with the appurtenances, and remained and continued in poſſeſſion of the ſame from thence until his quitting thereof, as is hereafter mentioned, to wit, at B. aforeſaid: And the ſaid John in fact further ſaith, that during the ſaid term ſo demiſed to the ſaid William L. "as laſt aforeſaid," and long before that time the *ſame* "ſaid laſt-mentioned" inn of the ſaid John was a houſe of great reſort, and of extenſive and eſtabliſhed cuſtom and trade, as well in the buſineſs of inn-keeping as in that of a victualler, which during all *the* "that" time *aforeſaid* was carried on and exerciſed therein: *And the ſaid John in fact further ſaith, that he the ſaid John being ſo ſeiſed as aforeſaid, and being deſirous that the ſaid William L. ſhould quit and deliver up the poſſeſſion of the ſaid premiſes ſo to him demiſed as aforeſaid, with the appurtenances, at the end and determination of the ſaid term ſo to him thereof demiſed as aforeſaid, he the ſaid John, during the continuance of the ſaid term, and long before the determination thereof, to wit, on the fifth of January, A. D. 1782, at B. aforeſaid, gave notice to the ſaid William L. for him the ſaid William L. to quit; and the ſaid John did thereby then and there require the ſaid William L. to quit, leave, and deliver up the poſſeſſion of the ſaid inn, and other the premiſes ſo to him demiſed as aforeſaid, with the appurtenances, unto him the ſaid John at the end and expiration of the ſaid term of ſeven years ſo thereof demiſed to him the ſaid W. L. as aforeſaid, that is to ſay, upon the fifth of July then next following, and each in the ſaid year of Our Lord 1782, and thereupon the ſaid John in full expectation and confidence that the ſaid William L. would quit and deliver up the poſſeſſion of the ſaid premiſes ſo to him demiſed as aforeſaid, with the appurtenances, to him the ſaid John at the end and expiration of the ſaid term, and according to the tenor of ſuch notice to quit as aforeſaid, afterwards, and before the expiration of the ſaid term, to wit, on the twentieth of June, A. D. 1782 aforeſaid, at B. aforeſaid, agreed with one James Cornwall to let and demiſe unto him the ſaid James Cornwall, at and upon the end and expiration of the ſaid term ſo demiſed to the ſaid William L. as aforeſaid, the ſaid ſeveral premiſes ſo demiſed to the ſaid W. L. as aforeſaid, with the appur-*

appurtenances, except the ſaid chamber over the ſaid malt-houſe, in lieu and inſtead of which, it was then and there agreed by and between the ſaid John and the ſaid James Cornwall, that the ſaid James C. ſhould have a certain chamber over one of the aforeſaid ſtables belonging to the ſaid inn, for the term of ſeven years from thence next enſuing, at and under the improved yearly rent of forty pounds, and that he the ſaid James C. ſhould have poſſeſſion of the ſaid laſt mentioned premiſes, with the appurtenances, upon the ſaid fifth of July, A D. 1782 *aforeſaid, in conſideration whereof the ſaid James C. then and there agreed with him the ſaid John to take the ſaid laſt-mentioned premiſes, with the appurtenances, of him the ſaid John for the ſaid laſt-mentioned term of ſeven years, at and under the ſaid yearly rent of forty pounds, and alſo that the ſaid James C. would, during all that time, take of him the ſaid John all ſuch malt as he the ſaid James C ſhould, during the ſaid laſt-mentioned term, uſe; of which ſaid agreement ſo made between the ſaid John and the ſaid James C. as aforeſaid he the ſaid William L. afterwards, and before the expiration of the ſaid term ſo to him demiſed as aforeſaid, had notice, to wit, at B. aforeſaid And the ſaid John in fact further ſaith, that although the ſaid term ſo demiſed to the ſaid William L. as aforeſaid, did afterwards, to wit, on the ſaid fifth of July, A D.* 1782 *aforeſaid, ſo ſet, end, expire, and determine, to wit, at B aforeſaid, and although the ſaid John did then and there, at the end and expiration of the ſaid term, expect the ſaid William L to quit, deliver up, and relinquiſh the poſſeſſion of the ſaid term and other premiſes ſo to him demiſed as aforeſaid, with the appurtenances, unto him the ſaid John, according to the ſaid notice ſo to him the ſaid William L. given as aforeſaid, as he then and there well knew, although the ſaid William L. ought then and there to have quitted the ſaid inn and premiſes, with the appurtenances, and to have yielded and delivered up the ſame and the poſſeſſion thereof to him the ſaid John*: "And the ſaid John in fact further ſaith, that before the ſuing forth of the original writ of him the ſaid J to wit, on the ſaid fifth of July, in the year 1782 aforeſaid, the ſaid term ſo by him demiſed to the ſaid W. L. as laſt aforeſaid, expired, ended, and determined, and that the ſaid William L. ought to have thereupon quitted and relinquiſhed the ſaid laſt-mentioned inn, with the appurtenances, ſo to him demiſed as aforeſaid, to wit, at B. aforeſaid, " yet the ſaid William L. contriving and maliciouſly intending, wrongfully and unjuſtly, to injure the ſaid John, *and to hinder and prevent him of the benefit of the ſaid agreement ſo by him made with the ſaid James C. as aforeſaid*, did not, at the end and expiration of the ſaid term ſo to him demiſed as "laſt" aforeſaid, that is to ſay, upon the ſaid fifth day of July, in the year 1782 aforeſaid, or at any time before quit, yield, or deliver up the poſſeſſion of the ſaid "laſt-mentioned" inn *and premiſes*, with the appurtenances, *ſo to him demiſed as aforeſaid*, and to *him* the ſaid John, but *on the contrary thereof then and there* wholly refuſed ſo to do, and on the contrary, wrongfully, unjuſtly, *and maliciouſly*, and without the leave or licence, and againſt the "expreſſed" will of the ſaid John, and with a view "and deſign" *to deprive*

prive him of the benefit of his aforeſaid agreement with the ſaid James C. as well as to injure the trade and buſineſs of the ſaid "laſt-mentioned" inn, *in the manner hereafter in this Count mentioned*, held over and remained and continued in the poſſeſſion of the ſaid "laſt-mentioned" inn *and premiſes, ſo to him the ſaid William L. demiſed as aforeſaid*, with the appurtenances, from and after the end and expiration of the aforeſaid demiſe thereof to him the ſaid William L. for a long ſpace of time, to wit, until and upon "the ſaid" eighteenth of April in the year *of Our Lord* 1783 "aforeſaid," when he left and yielded up the ſame to the ſaid John, to wit, at B. aforeſaid, *in the county aforeſaid*: And the ſaid John in fact further ſaith, that the ſaid William Large, ſo holding over the poſſeſſion of the ſaid "laſt-mentioned" inn as aforeſaid, and contriving and intending to further injure the ſaid John, and to draw off and remove the ancient and eſtabliſhed cuſtom, "trade, and buſineſs" of his *aforeſaid* "ſaid laſt-mentioned" inn from the ſame unto himſelf the ſaid W. L. and thereby to render the ſaid "laſt mentioned" inn, and the eſtate and intereſt of the ſaid John of no title or value, whilſt he the ſaid W. L. ſo held over the poſſeſſion of the ſaid "laſt-mentioned" inn as aforeſaid, to wit, on the eighteenth of March, in the year 1783 aforeſaid, at B. aforeſaid, did wrongfully and maliciouſly, and with a view and deſign to draw off and remove the *ancient and* eſtabliſhed cuſtom, trade, and buſineſs of the ſaid "laſt-mentioned" inn of the ſaid John, ſet up and opened a new, and another, and different inn in B. aforeſaid, near to the ſaid "laſt-mentioned" inn of the ſaid John, and did, on the ſame day and year laſt aforeſaid, and on divers other days and times between that day and his quitting the ſaid "laſt-mentioned" inn of the ſaid John as aforeſaid, exerciſe, follow, and carry on in the ſaid inn ſo by him the ſaid "William L." newly opened "as laſt" aforeſaid, the ſame and the like trades and buſineſſes of an inn keeper and victualler, as had been theretofore exerciſed and carried on in the ſaid laſt-mentioned inn of the ſaid John, and from the time of his ſetting up and opening ſuch new inn as "laſt" aforeſaid, until his quitting the ſaid "laſt-mentioned" inn of the ſaid John "as aforeſaid" at B. aforeſaid, he the ſaid W. L. did wrongfully and maliciouſly, and with *a* "ſuch" view and deſign to draw off and remove the eſtabliſhed cuſtom, trade, and buſineſs of the ſaid "laſt-mentioned" inn of the ſaid John unto the ſaid inn ſo by him the ſaid W. L. newly ſet up and opened as "laſt" aforeſaid, entirely deſiſt from and decline carrying on the ſaid trades and buſineſſes of an innkeeper and victualler in the ſaid "laſt-mentioned" inn of the ſaid John; and inſtead of carrying on ſuch trades and buſineſſes in the ſaid "laſt-mentioned" inn "of the ſaid John" as uſual, and as during *all* that time he ought to have done, he the ſaid William L. wrongfully and maliciouſly, and with *the ſaid* "ſuch" view and deſign to draw and remove the *ancient and eſtabliſhed* cuſtom, trade, and buſineſs of the ſaid laſt-mentioned inn did, during all the time laſt aforeſaid, at B. aforeſaid, cauſe and procure "the accuſtomed gueſts and cuſtomers at the

the ſaid laſt-mentioned inn, and divers other" perſons from time to time coming to the ſaid "laſt-mentioned" inn of the ſaid John, with intent to become gueſts and cuſtomers *as they had before been accuſtomed to do*, to be taken, ſent, and brought from the ſaid "laſt-mentioned" inn of the ſaid John, to the ſaid inn ſo newly opened by "him" the ſaid W. L. "as laſt" aforeſaid; and did there, in the ſaid "laſt-mentioned" inn "ſo opened by the ſaid William L. as aforeſaid, inſtead of in the ſaid laſt-mentioned inn of the ſaid John, wrongfully and maliciouſly, and with ſuch view and deſign as laſt aforeſaid," entertain and ſerve ſuch gueſts and cuſtomers in the way of his aforeſaid trades and buſineſſes of an inn-keeper and victualler, *inſtead of entertaining and ſerving ſuch gueſts and cuſtomers in the ſaid inn of the ſaid John; and the better to bring about ſuch his aforeſaid deſign and intention to draw off and remove the ancient and eſtabliſhed cuſtom, trade, and buſineſs of the ſaid inn of the ſaid John, he the ſaid William did, during all the time laſt aforeſaid, and before he had entirely removed from the ſaid inn of the ſaid John, to wit, at B. aforeſaid, wrongfully, maliciouſly, and falſely adverti*ſ*ed and apprized the public by a certain falſe and public adverti*ſ*ement in a certain newſpaper, called the dated and publiſhed the day of , A. D. 178 , by a certain other falſe and public adverti*ſ*ement in a certain other newſpaper, called the , dated and publiſhed on the day of , in the ſaid year of Our Lord 178 , that he had then removed from the ſaid inn of the ſaid John unto the ſaid inn ſo by him newly opened as aforeſaid; and did then and there by ſuch means as aforeſaid wrongfully and maliciouſly ſolicit the cuſtom of the public there in the ſaid newly opened inn, inſtead of in the ſaid inn of the ſaid John, although he the ſaid William was ſtill in the poſſeſſion of the ſaid laſt-mentioned inn as the keeper thereof*: And the ſaid John in fact further ſaith, that the ſaid William L. hath always ſince he left and quitted the ſaid "laſt-mentioned" inn of the ſaid John as aforeſaid hitherto kept open, and ſtill keeps open the ſaid inn ſo by him newly *ſet up and* opened as "laſt" aforeſaid; and that "by reaſon of the premiſes above-mentioned" *the ways and means aforeſaid*, he the ſaid William L. did wrongfully and unjuſtly draw off and remove, *and hath wrongfully and unjuſtly drawn off and removed* the *ancient* "old" and eſtabliſhed cuſtom, trade, and buſineſs of "the ſaid laſt-mentioned" inn of the ſaid John unto himſelf the ſaid W. L. "to wit, at B. aforeſaid;" *whereby and on account of the premiſes aforeſaid he the ſaid John hath loſt the benefit and advantage of the ſaid agreement and contract ſo by him entered into with the ſaid James C. as aforeſaid, who, in conſequence of the ſaid John being unable to perform the ſaid contract on his part, by reaſon of the ſaid William L. ſo holding over and continuing in the ſaid inn of the ſaid John as aforeſaid, declined and abandoned the ſaid contract and agreement on his part, and refuſed to perform the ſame, or in any manner whatſoever to take the ſaid inn of the ſaid John; and he the ſaid John ſaith, that by reaſon of the grievances reſpectively above-mentioned he the ſaid John hath been unavoidably put*

to great expence and trouble in and about the endeavouring to let and procure a tenant for his said inn, and to bring back and restore to it its ancient trade and business, but that he hath not been able so to do, but the said inn hath always, since the quitting the same by the said William L. hitherto remained and continued upon his hands untenanted, and the trade and business of the said inn is entirely lost, destroyed, and the estate and interest of him the said John in the said inn is by reason of the several premises hereinbefore-mentioned become of little or no value at all to him the said John, to wit, at B. aforesaid, in the said county of S." whereby the said John hath not only lost the benefit and advantage that would have arisen and accrued to him from the performance of a certain contract for letting the said last-mentioned inn of the said John to one James C. who had, before the expiration of the aforesaid demise thereof, agreed to take the same upon the expiration of the said last-mentioned demise to the said William Large, at an improved rent, as well as to take and buy malt of him the said John, at the said last-mentioned inn, but hath always since the said William L. quitted the same as aforesaid been, and now is untenanted, and he the said John hath also been necessarily forced to lay out and expend divers sums of money in and about the endeavouring to let the said last-mentioned inn, and to restore and bring back to it its ancient and original custom, trade, and business, but hath been entirely unable so to do, and the said trade, custom, and business is entirely lost, and the estate and interest of the said John of and in the said last-mentioned inn is thereby, and in consequence of the several grievances, injuries, and premises in this Count mentioned, not only diminished and reduced, but in fact rendered of little or no value whatsoever to him the said John, to wit, at B. aforesaid, in the said county of S." And whereas the said John, before the committing the grievance hereafter mentioned, to wit, on the said twentieth of July, A. D. 1773 aforesaid, at B. aforesaid, in the county aforesaid, was, and from thence hitherto hath been, and still is, seised in his demesne as of fee, of and in a certain other messuage or inn, situate at B. aforesaid, in the county aforesaid, and called or known by the name or sign of the White Hart, together with the brewhouses, stables, outhouses and other edifices and buildings, yard, garden, and orchard, and all other the appurtenances thereunto belonging, and being so seised he the said John, on the day and year last aforesaid, at B. aforesaid, demised the said last mentioned messuage or inn and premises last aforesaid, with the appurtenances, (except as in the said demise thereof was and is excepted) together with the use of a chamber over a certain malt-house belonging to the said last-mentioned premises, to the said W. L. to hold the same to him the said W. L. for the term of seven years from the fifth day of the said July, A. D. 1775, at and under the yearly rent of thirty one pounds ten shillings, by virtue of which said last mentioned demise he the said W. L. after the making thereof, and before the committing the grievance hereafter mentioned, entered into, and became, and was possessed of the said last-

3d Count.

laſt-mentioned meſſuage or inn, and premiſes, with the appurtenances, for the ſaid term ſ to him there f ni i s t ar geſaid, to wit, at B aforeſaid And the ſaid John f ſet furth r ſa s, that he the ſa l John, being ſo ſ iſed as laſt afo eſaid, and conceiving that the ſa d W. L would quit and de iver up the poſſeſſi n of the ſaid laſt m nt oi ed m ſſuage or inn, and premiſ , with the appurte ances, to him the ſaid J hn, at th e i d expiration of the ſaid laſt mentioned ter n, to wit, on th f urth f June, A D. 1782 aforeſaid, at B aforeſa l, entered int a certain agreem nt with one James Cornwall f r lettin, a id de iſin r un o h m the ſaid James C upon the end in l expiratio of th ſa d term ſo demi l to the ſaid W L. as laſt aforeſaid, the ſaid p miſ s ſo demiſed to the ſaid W L as laſt aforeſaid, wi h the appurt nances, except the ſaid cha ber over the ſaid m lt hou , in h u id in the ſt ad of which ſaid chamber it was th n and the a re d, by and between the ſaid John and the ſaid James C. that the ſaid James C. ſhould have a certain chamber over one of the ſaid ſtables b l ng ing to the ſaid laſt mentioned inn, at and during the improved yearly rent of forty pounds, of which l l ag nt is mad between the ſaid John and the ſaid Jam s C. s laſt aforeſaid, h the ſaid W I afterwards, and bef re the e piration f the ſaid t rm ſo to him mi l as laſt a o e l al notice, to wit at B aforeſaid And the ſaid John i t f i h r ſaith, that although the ſaid term ſo d mi ſe l to the ſa W I l l at aforeſaid h l afterwards, to wit, on the ſa l fift day of July, A D 7 2 afor ſa d, ceaſ , and expi e, and d t min , to wit at ſ af eſaid, nd alth u h he the ſa l John d d l a l p ſſ i of the ſa l laſt n nti ned meſſ ge or inn, and pre miſ , ſo de miſe l to the ſa l W I as forei d, with the appu tenances, and require the ſa l W L to quit, yield, and d liv r up h ame unto him the ſa l J n, t th en i n l expi ation of ſ l t m ſo thereof demiſed to the ſa l W L as laſt aforeſa d, to wit, at B afore id, in ſtl ou h t ſaid W I ought then and t er to have quitted the ſa d l ſt mentioned meſſua e or inn, and premiſ , with the appu te ances, and to have yi l ed and deliver d up the ame, and th p ſſion thereof, unto him the ſaid John, yet the ſa l W L. contri g and maliciouſly intending, wrongfully and unjuſtly to injure the ſ d John, and to hinder and deprive h m of the ſaid agr ment ſo by him made with the ſa d James C as laſt aforeſaid, wh ch was ſt ll con u ing and in force between them, did not, at the end and expirati n of the ſaid term ſo to h m le mi d a laſt afor ſaid, that is to ſ y, upon the ſaid fifth of July A D 17c2 aforeſa l, or at any time bef e, quit, yield, and deliver up the poſſeſſi n of the ſa l laſt m ntioned meſſuage or inn, and premiſes, with the appurtenance , to him the ſaid John, but on the contrary thereof, then and there wholly refuſed ſo to do, and wrongfully, unjuſtly, and maliciouſly, and without the leave or licence, and againſt the will of the ſa l John, and with a view to deprive him of the benefit of his ſaid laſt-mentioned agreement with the ſaid James C. held over, and remained, and continued in the poſ-

ſeſſion of the ſaid laſt mentioned meſſuage or inn, and premiſes with the appurtenances, from and after the end and expiration of the aforeſaid demiſe thereof to him the ſaid W. L. for a long ſpace of time, to wit, until and upon the eighteenth of April, in the ſaid year of Our Lord 1783, to wit, at B. aforeſaid; whereby and by reaſon of which ſaid premiſes the ſaid John hath loſt the benefit and advantage of the ſaid laſt-mentioned agreement and contract ſo by him entered into with the ſaid James C. as aforeſaid, who, in conſequence of the ſaid John being unable to perform the ſaid contract on his part, by reaſon of the ſaid W. L. ſo holding over and continuing in the ſaid laſt mentioned meſſuage or inn of him the ſaid John, and the ſaid laſt-mentioned meſſuage or inn hath in conſequence thereof, and by reaſon and means of the premiſes in this Count mentioned, always, from the quitting thereof by the ſaid W. L hitherto been, and ſtill is, untenanted, and ſo is likely to remain and continue, to wit, at B. aforeſaid, in the ſaid county of S., wherefore he the ſaid John ſaith that he is injured, and hath ſuſtained damage to the amount of one thouſand pounds, for which he brings his ſuit, &c.

T. DAVENPORT.

Plea of judgment recovered in ejectment, and in an action for meſne profits.

Firſt, Not guilty, and iſſue thereon. Secondly, As to all the premiſes in the ſaid firſt Count of the ſaid declaration mentioned, *actio non*, becauſe he ſays, that heretofore, to wit, in Hilary term, in the twenty third year of the reign of our lord the now king, the ſaid John caused him the ſaid William to be impleaded by the name and addition of William Large, late of Ipſwich, in the ſaid county of S. yeoman, at the ſuit of one Ralph Den, the nominal plaintiff in the ſaid plea, in the court of our lord the now king, before the king himſelf, the ſaid court then and ſtill being at Weſtminſter, in the county of Middleſex, in certain plea whereto forſooth with force and arms he the ſaid William entered into one meſſuage, one brew houſe, two granaries, ſix ſtables, two curtilages, one garden, one orchard, and one acre of land, with the appurtenances, ſituate, lying, and being in Brandon, otherwiſe Brandon Ferry, in the county aforeſaid, which John King, gentleman, demiſed to the ſaid Ralph for a term of years, which was not then expired, and ejected him from his ſaid farm, and other wrongs to him did, to the great damage of the ſaid Ralph, and againſt the peace of our ſovereign lord the king; and whereupon the ſaid Ralph, by William Mott, his attorney, complained, that whereas the ſaid John King, on the ninth of July, in the twenty-ſecond year of the reign of our ſaid lord the king, at B. otherwiſe B. Ferry aforeſaid, in the county aforeſaid, had demiſed to the ſaid Ralph the tenements aforeſaid, with the appurtenances, to have and to hold the ſaid tenements, with the appurtenances unto the ſaid R. and his aſſigns, from the eighth day of the ſame July, to the full end and term of ſeven years then next following, and fully to be complete and ended, by virtue of which ſaid demiſe the ſaid R. entered into the ſaid tenements, with the appurtenances, and

was

was poſſeſſed thereof, and the ſaid R. being ſo poſſeſſed thereof, the ſaid W. afterwards, that is to ſay, on the ſaid ninth day of July, in the ſaid twenty ſecond year of the reign of his ſaid majeſty, with force and arms, that is to ſay, with ſwords, ſtaves, and knives, entered into the ſaid tenements, with the appurtenances, which the ſaid John King demiſed to the ſaid R. in manner aforeſaid, for the term aforeſaid, which was not then expired, and ejected the ſaid R. out of his ſaid farm, and other wrongs to him did, to the great damage of the ſaid R. and againſt the peace of our ſaid ſovereign lord the king, whereupon the ſaid R. ſaid he was injured, and had ſuſtained damage to the value of one hundred pounds, and thereupon he brought ſuit, &c. And the ſaid William L. further ſays, that ſuch proceedings were thereupon had in that plea of the ſame court of our ſaid lord the king, before the king himſelf, at Weſtminſter aforeſaid, that afterwards, to wit, in Eaſter term, in the ſame twenty-third year of the reign of our ſaid lord the king, the ſaid R. by the judgment and conſideration of the ſaid court, did recover againſt the ſaid W. L his term aforeſaid of and in the ſaid tenements, with the appurtenances, together with twenty ſeven pounds ten ſhillings, by the ſaid court adjudged to him, as well for his damages which he had ſuſtained by occaſion of the ſaid treſpaſs and ejectment, as for his coſts and charges by him laid out about his ſuit in that behalf, whereof he the ſaid W. L. was convicted, as by the record and proceedings thereof now remaining in the ſaid court of our ſaid lord the king, before the king himſelf, at Weſtminſter aforeſaid, more fully appears, which ſaid judgment ſtill remains in full force, not reverſed, annulled, or made void: And the ſaid William L. further ſays, that afterwards, to wit, in the ſame Eaſter term laſt-mentioned, to wit, on Monday next after one month of the day of Eaſter in that term, the ſaid John cauſed the ſaid William to be impleaded by bill, without his majeſty's writ, at the ſuit of the ſaid R Den, the nominal plaintiff aforeſaid, in the ſaid court of our ſaid lord the king, before the king himſelf, at Weſtminſter aforeſaid, in a certain plea of treſpaſs for the recovery of his damages by him ſuſtained by reaſon of the ſaid ſeveral premiſes in the ſaid firſt Count of the ſaid declaration of him the ſaid John now exhibited, mentioned, and then and there declared againſt him therein, for that he the ſaid William, on the ninth of July, A. D. 1782, at B. otherwiſe B. Ferry, in the ſaid county of S. with force and arms, entered into one meſſuage, one brew-houſe, two granaries, ſix ſtables, two curtilages, one garden, one orchard, and one acre of land, with the appurtenances, of the ſaid R. ſituate, lying, and being in B. otherwiſe B. Ferry aforeſaid, in the ſaid county of S. and ejected, expelled, put out, and removed the ſaid R. from the poſſeſſion and occupation thereof, and him the ſaid R. ſo ejected, expelled, put out, removed, and kept out from the poſſeſſion and occupation thereof, for a long ſpace of time, to wit, from the ſaid ninth of July, in the ſaid year of Our Lord 1782, until the ſixteenth of May, A. D. 1783, and during all that time had and received all the rents, iſſues, and pro-

fits of the ſaid tenements to his own uſe, whereby the ſaid R Den loſt the benefit and advantage of the tenements aforeſaid, during all that time, and was obliged to lay out and expend, and did lay out and expend a large ſum of money, to wit, the ſum of fifty pounds in order to recover the poſſeſſion of the tenements, and then and there did other injuries to the ſaid R. D to the great damage of the ſaid R D. and againſt the peace of our lord the preſent king, whereupon the ſaid R. ſaid he was injured, and had ſuſtained damage to the value of five hundred pounds, and therefore he brought ſuit, &c; and he the ſaid William L. by E. J ſecond, his attorney, defends the force and injury, when, &c. and ſaid he was not guilty of the treſpaſs above laid to his charge, in manner and form as the ſaid R. had above complained thereof againſt him, and of this he puts himſelf upon the country; and the ſaid R. did the like, which ſaid iſſue afterwards to wit, on the fourteenth of Auguſt, A. D 1783, at Bury St. Edmunds, in the ſaid county of S. before ſir William H. Aſhhurſt, knight, and ſir Beaumont Hotham, knight, juſtices of our ſaid lord the king, appointed to hold the aſſizes in and for the county of Suffolk, according to the form of the ſtatute in that caſe made and provided, came on to be tried by a certain jury of the ſaid county of S in that behalf duly tried, choſen, and ſworn, between the ſaid R D. and the ſaid W. L, and thereupon the jurors of that jury upon their oath ſaid, that the ſaid W. L was guilty of the ſaid treſpaſs above laid to his charge, in manner and form as the ſaid R had above complained againſt him, and they aſſeſſed the damages of the ſaid R. by him ſuſtained on occaſion of the committing of that treſpaſs, beſides his coſts and charges by him about his ſuit in that behalf expended, to ſixty-ſeven pounds ten ſhillings, and for the coſts and charges to forty ſhillings, as by the record and proceedings thereof remaining in the ſaid court of our ſaid lord the king, before the king himſelf, at Weſtminſter aforeſaid in full force, more fully appears. And the ſaid William L. further ſays, that afterwards, to wit, on the twentieth of November, A D. 1783, he the ſaid William paid to the ſaid John the ſaid ſeveral ſums of ſixty-ſeven pounds ten ſhillings, and forty ſhillings, ſo aſſeſſed by the ſaid jury as aforeſaid, and alſo the former ſum of thirty ſeven pounds ten ſhillings, which by the ſaid court of our ſaid lord the king, before the king himſelf, at Weſtminſter aforeſaid, was adjudged to the ſaid R Den, his aſſent for increaſe of his coſts and charges by him about his ſuit in that behalf expended, to wit, at Bury aforeſaid, in the ſaid county of S.: And the ſaid William in fact ſays, that the ſaid William and the ſaid William L. whom the ſaid John cauſed to be impleaded in the name of the ſaid R. Den aforeſaid, are one and the ſame perſon, and not other or different; and that the ſaid John King, the leſſor of the ſaid R. and the ſaid John King, the now plaintiff, are one and the ſame perſon and not other or different; and that the ſaid meſſuage, bread-houſe, granaries, ſtables, curtilages, gardens, orchard, and lands in the ſaid ſeveral declarations of the ſaid R. Den mentioned, and the ſaid inn and other tenements in the ſaid firſt

Count

Count of the ſaid declaration of the ſaid John mentioned, are the ſame premiſes, and not other or different, and that the ſaid keeping and continuing the ſaid R. ejected, expel'ed, and removed from the poſſeſſion of the tenements in the ſaid declaration of the ſaid R. mentioned, and during that time taking the rents, iſſues, and profits thereof to his the ſaid William's own uſe, and the ſaid damage therein alledged to have been ſuſtained by the ſaid R. thereby, and the ſaid holding over remaining, and continuing in poſſeſſion of the ſaidamn, and the ſaid premiſes in the ſaid declaration of the ſaid John mentioned, and the damages therein alledged to have been ſuſtained by the ſaid John thereby, are the ſame cauſes of complaint, and not other or different, to wit, at B. aforeſaid, in the ſaid county of S., and this the ſaid William is ready to verify, wherefore he prays judgment if the ſaid John ought to have or maintain his ſaid action hereof againſt him, &c. [There were ſimilar pleas to the ſecond and third Counts of the declaration].

THOMAS WALKER.

Replication, that the cauſes of action are different.

And as to the ſaid plea of the ſaid William L. by him laſtly above pleaded in bar as to all the premiſes in the ſaid firſt Count of the ſaid declaration in this cauſe mentioned, he the ſaid John K. ſays, that notwithſtanding any thing in that plea alledged he ought not to be precluded from having and maintaining his aforeſaid action in reſpect of ſuch premiſes againſt the ſaid William L.; becauſe proteſting that the ſaid plea and the matters therein contained, in manner and form as the ſame are above pleaded and ſet forth, are not ſufficient in law to preclude him the ſaid John K. from having and maintaining his ſaid action in reſpect of the premiſes in the ſaid firſt Count of the declaration in this cauſe mentioned againſt the ſaid William L., for replication in this behalf he the ſaid John K. ſays, that though true it is that ſuch judgments as are mentioned in the ſaid plea of the ſaid William L. by him laſtly above pleaded in bar to the ſaid firſt Count of the declaration in this action or ſuit were ſo recovered and obtained by him the ſaid John K. in the name of R. Den, as nominal plaintiff in thoſe actions or ſuits, as in the ſaid laſt mentioned plea of the ſaid William L. is alledged, yet he the ſaid John K. in fact further ſays, that the ſaid keeping and continuing the ſaid R. ejected, expelled, and removed from the poſſeſſion of the tenements in the ſaid declaration of the ſaid Ralph mentioned, and during that time taking the rents, iſſues, and profits thereof to his the ſaid William's own uſe, and the ſaid damages therein alledged to have been ſuſtained by the ſaid R. thereby, and the ſaid holding over, and remaining, and continuing in the poſſeſſion of the ſaid inn and the ſaid premiſes in the ſaid firſt Count of the ſaid declaration of the ſaid John mentioned, and the damages therein alledged to have been ſuſtained by the ſaid John thereby, are not the ſame cauſes of complaint, action, or ſuit, as the ſaid William L. hath above in that plea alledged, but are other and different cauſes of action, to wit, at B. aforeſaid, in the ſaid county of S.; and this

he the ſaid John King prays may be enquired of by the country; and the ſaid William L. doth the like. [The other ſpecial pleas were replied to in the ſame manner.]

THOMAS DAVENPORT.

Eaſter Term, 29 Geo. III.

Declaration in tort for not redelivering a gelding which defendant had taken damage feaſant after tender of amends

KENT, to wit John Penkurſt complains of William Comfort, being, &c., for that whereas the ſaid William, before the committing of the grievance hereafter next mentioned, to wit, on the ſeventh day of April, in the year of Our Lord 1789, at the pariſh of , in the county of Kent, in a certain cloſe there then in the poſſeſſion of the ſaid William, took and diſtrained a certain gelding of the ſaid John of a large price, to wit, of the price of forty pounds, as doing damage there to him the ſaid William, and then and there impounded the ſaid gelding as a diſtreſs for ſuch damages in a certain barn of the ſaid William, ſituate and being at the pariſh aforeſaid, in the county aforeſaid, and whereas afterwards, and whilſt the ſaid gelding was ſo impounded in the ſaid barn as aforeſaid, to wit, on the ſeventeenth of April, in the year aforeſaid, at, &c. aforeſaid, the ſaid John tendered and offered to pay to the ſaid W a certain ſum of money, to wit, the ſum of three ſhillings of lawful, &c. as and for a ſatisfaction and amends for the damage ſo done by the ſaid gelding in the ſaid cloſe (the ſame being then and there a ſufficient and reaſonable ſatisfaction and amends for ſuch damage), and then and there requeſted the ſaid William to accept the ſaid ſum of three ſhillings as in full for ſuch ſatisfaction and amends as aforeſaid, and thereupon to deliver the ſaid gelding to him the ſaid John, yet the ſaid William, well knowing all and ſingular the premiſes, but not regarding his duty in this behalf, and contriving, and wrongfully, and unjuſtly intending to injure the ſaid John, and to deprive him of the uſe and benefit of the ſaid gelding, did not, nor would, at the ſaid time when he was ſo requeſted as aforeſaid, or at any time afterwards, accept the ſaid ſum of three ſhillings of and from the ſaid John as and for ſuch ſatisfaction and amends as aforeſaid, or deliver the ſaid gelding to him the ſaid John, but wholly refuſed and neglected ſo to do, and on the contrary thereof he the ſaid William hath from thence hitherto wrongfully and unjuſtly kept and detained, and ſtill keeps and detains the ſaid gelding, whereby the ſaid John hath loſt and been deprived of the uſe and benefit of the ſaid gelding, to wit, at, &c. aforeſaid And whereas the ſaid John, on the ſaid ſeventh of April, A. D 1789 aforeſaid, at, &c. aforeſaid, was lawfully poſſeſſed of a certain other gelding of a large price, to wit, of the price of forty pounds of lawful money of Great Britain, as of his own proper gelding; and being ſo thereof poſſeſſed, he the ſaid John afterwards, to wit, on, &c. laſt aforeſaid, at, &c. aforeſaid, caſually loſt the ſaid laſt-mentioned gelding out of his cuſtody and poſſeſſion, which ſaid laſt-mentioned gelding afterwards, to wit, on, &c. laſt aforeſaid, then came to the cuſtody and poſſeſſion of

2d Count in trover

the ſaid William, who then and there found the ſame; yet the ſaid William, well knowing the ſaid laſt-mentioned gelding to be the proper gelding of the ſaid John, and of right to belong and appertain to him the ſaid John, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid John in this behalf, hath not as yet delivered the ſaid laſt-mentioned gelding to the ſaid John, although often requeſted ſo to do, but he to do this hath hitherto wholly refuſed, and on the contrary thereof afterwards, to wit, on the thirteenth of April, in the ninth year aforeſaid, at, &c. aforeſaid, converted and diſpoſed of the ſaid laſt-mentioned gelding to his own uſe; to the damage of the ſaid John of forty pounds; and therefore he brings ſuit, &c. Pledges, &c. *Drawn by* Mr. TIDD.

This cauſe was tried before lord Loughborough, and a verdict found for the plaintiff on the firſt Count.

LONDON, to wit. Michael Bentley, eſquire, complains of William Shepherd, being, &c.; for that whereas the ſaid M. heretofore, to wit, on the tenth of October A. D. 1788, at L. aforeſaid, in the pariſh of Saint Mary-le-bow, in the ward of Cheap, was lawfully poſſeſſed of a certain gun of a large value, to wit, the value of ten pounds, of lawful, &c. and being ſo thereof poſſeſſed, he the ſaid M. afterwards, to wit, on the day and year aforeſaid, at L. aforeſaid, in the pariſh and ward aforeſaid, at the ſpecial inſtance and requeſt of the ſaid William delivered the ſaid gun to the ſaid William to be by him cleaned and afterwards returned to the ſaid M. within a reaſonable time for that purpoſe; and although the ſaid William then and there had and received the ſaid gun of and from the ſaid M. for the purpoſe aforeſaid, yet the ſaid William, contriving and wrongfully intending to deceive and injure the ſaid M. in this behalf, did not clean the ſaid gun and return the ſame to the ſaid M. within a reaſonable time for that purpoſe, but on the contrary kept and detained the ſame from the ſaid M. for a long and unreaſonable ſpace of time, to wit, from the time of the ſaid delivery thereof hitherto and during all that time wholly refuſed and neglected to return the ſame to the ſaid M. whereby the ſaid M. hath loſt and been deprived as well of his ſaid gun as of the uſe and benefit thereof, to wit, at L. aforeſaid, in the pariſh and ward aforeſaid: And whereas the ſaid M. afterwards, to wit, on the day and year aforeſaid, at, &c. aforeſaid, was lawfully poſſeſſed of a certain other gun of a large value, to wit, the value of ten pounds, of like, &c. as of his own property; and being ſo poſſeſſed thereof, the ſaid M. afterwards, to wit, on the day and year aforeſaid, at L. &c. aforeſaid, caſually loſt the ſame out of his hands and poſſeſſion; and the ſaid laſt-mentioned gun afterwards, to wit, on the day and year aforeſaid, at, &c. aforeſaid, came to the hands and poſſeſſion of the ſaid W. by finding; yet the ſaid William, well knowing the ſaid laſt-mentioned

Tert for nonfeaſance in not cleaning and delivering a gun, with a count in trover.

2d Count.

tioned gun to be the property of the ſaid M and of right to belong and appertain to him, but contriving and wrongfully intending to deceive and injure the ſaid M. in this behalf, hath not (although often requeſted, &c.) delivered the ſaid laſt-mentioned gun to the ſaid M. but on the contrary afterwards, to wit, on the *twelfth of May*, in the year aforeſaid, at L. &c. aforeſaid, converted and diſpoſed thereof to his own uſe, to the damage of the ſaid M. of twenty pounds; and therefore he brings ſuit, &c. Pledges, &c.

S. MARRYAT.

By the owner of a ſloop in the Thames againſt the owners of another, for dropping their anchor without a buoy, whereby plaintiff's ſloop fell on the anchor, and was bulged, &c.

LONDON, to wit. John Edwick complains of John Cologan, William Pollard, and James Cooper, being, &c. for that whereas the ſaid John E. on the ſeventeenth of December 1787, at L. aforeſaid, in the pariſh of Saint Mary-le-bow, in the ward of Cheap, was and yet is owner of a certain ſloop or veſſel called the Neptune of M. which ſaid ſloop or veſſel was then and there in the river Thames, to wit, in the pariſh and ward aforeſaid, the ſaid river then being a public king's highway and navigable river, and was there and there moored near to a certain wharf called H. wharf, having on board a certain cargo with which ſhe was then and there laden, the ſame being a proper and convenient place for that purpoſe. And whereas the ſaid J. E. W. and James, on the ſame day and year aforeſaid, were and yet are the owners of a certain ſloop or veſſel called the S. then and there being in the river aforeſaid, near to the ſaid place where the ſaid ſloop or veſſel of him the ſaid J. E. which was ſo moored as aforeſaid, yet the ſaid J. C. William, and James, well knowing the premiſes, but wrongfully and unjuſtly contriving to hurt, injure, and prejudice the ſaid J. E. in this behalf, then and there threw and dropt into the ſaid river T. a certain anchor out of the ſaid ſloop or veſſel called the S. and then fixed to the ſaid ſloop or veſſel laſt-mentioned with a certain rope or line, and continued the ſaid anchor ſo thrown and dropt into the ſaid river as aforeſaid for a long time, to wit, for the ſpace of forty eight hours then next following, and did not fix a buoy to the ſaid anchor to ſhew where the ſaid anchor was put, by reaſon whereof the ſaid ſhip or veſſel of the ſaid J. E. called the N. of M. afterwards, to wit, on the ſame day and year aforeſaid, to wit, at L. aforeſaid, in the pariſh and ward aforeſaid, in the ebbing of the tide of the ſaid river, for want of fixing a buoy to the ſaid anchor ſo thrown and dropt into the ſaid river T. as aforeſaid, fell and dropt upon the ſaid anchor of the ſaid J. C. William and James, whereby the ſaid ſloop or veſſel of the ſaid J. E. falling and dropping upon the ſaid anchor of the ſaid J. C. William and James, by and through the mere neglect and default of the ſaid J. C. William and James, in not fixing a buoy to the ſaid anchor, was much pierced, bulged, and broken, and then and there ſunk and became filled with water, and a certain cargo of great value of the ſaid J. E. to wit, of the value of one thouſand pounds, then on board the ſaid ſloop or

veſſel of the ſaid J. E. called the N of M. was thereby greatly damaged and ſpoiled, and the ſaid J. F. was neceſſarily obliged to lay out and expend, and neceſſarily did lay out and expend a large ſum of money, to wit, the ſum of two hundred pounds, in and about the raiſing, repairing, and amending the ſaid ſloop or veſſel, and in raiſing and unloading the ſaid cargo, and loſt the uſe and benefit of his ſaid ſloop or veſſel for a long time, to wit, for the ſpace of three weeks, and the ſaid ſloop or veſſel was thereby greatly leſſened in value, to wit, at L. aforeſaid, in the pariſh and ward afor ſaid. And for that whereas by the cuſtom of E. from time immemorial uſed and approved of, all owners of ſhips riding at anchor within any navigable river of E. for all the time aforeſaid uſed and were accuſtomed, and of right ought to fix a buoy to the anchors holding their ſhips, whereby other ſhips being in that river might by ſuch buoy avoid ſuch anchor, ſo that they might not be damaged thereby: And whereas the ſaid J. E. on the ſame day and year aforeſaid, at L. aforeſaid, in the pariſh and ward aforeſaid, was and yet is owner of a certain other ſloop or veſſel, called the N. of M which ſaid ſloop or veſſel laſt mentioned was then in the river Thames, to wit, in the pariſh and ward aforeſaid, the ſaid river then being a public king's highway and navigable river, and was then and there moored near to a certain wharf called H. wharf, having on board a certain cargo with which ſhe was then and there loaded, the ſame being a proper and common place for that purpoſe And whereas the ſaid J. C. W. and James, on the ſame day and year aforeſaid, were and yet are owners of a certain other ſloop or veſſel called the S. then alſo being in the river aforeſaid, near to the ſaid place where the ſaid ſloop or veſſel of the ſaid J. E. was ſo moored as laſt aforeſaid; yet the ſaid J. C. W. and James, well knowing the premiſes, but wrongfully and injuriouſly contriving and intending to hurt, injure, and prejudice the ſaid J. E in this behalf, then and there threw and dropt into the ſaid river Thames a certain anchor out of the ſaid ſloop or veſſel called the S and then fixed to the ſaid ſloop or veſſel laſt-mentioned with a certain rope or line, and continued the ſaid anchor ſo thrown and dropt into the ſaid river as aforeſaid for a long time, to wit, for the ſpace of forty eight hours then next following, and did not affix a buoy to the ſaid anchor to ſhew where the ſaid anchor was put, by reaſon whereof the ſaid laſt-mentioned ſloop or veſſel of the ſaid J. E. called the N. of M. afterwards, to wit, on the ſame day and year afor ſaid, in the ebbing of the tide of the ſaid river, for want of fixing a buoy to the ſaid laſt-mentioned anchor ſo thrown and dropt into the ſaid river as laſt aforeſaid, fell and dropt upon the ſaid anchor of the ſaid J. C. William and James, whereby the ſaid ſloop or veſſel of the ſaid J. E falling and dropping upon the ſaid anchor of the ſaid J. C. W. and James, by and through the mere neglect and default of the ſaid J. C. W. and James in not fixing a buoy to the ſaid anchor, was much pierced, bulged, and broken, and then and there ſunk and became filled with water, and a certain cargo of

2d Count, ſtating a cuſtom that owners of ſhips reſiding at anchor in navigable rivers ſhould fix buoys to their anchors

of the ſaid J. E. of great value, to wit, of the value of one thouſand pounds, then on board the ſaid ſloop or veſſel of the ſaid J. E. called the N. of M. was thereby greatly damaged and ſpoiled, and the ſaid J. E. was neceſſarily obliged to lay out and expend, and neceſſarily did lay out and expend a large ſum of money, to wit, the ſum of two hundred pounds, in and about the raiſing, repairing, and amending the ſaid laſt mentioned ſloop or veſſel, called the N. of M. and in the raiſing and unloading the ſaid cargo, and loſt the uſe and benefit of his ſaid ſloop or veſſel for a long time, to wit, for the ſpace of three weeks, and the ſaid ſloop or veſſel was thereby greatly leſſened in value, to wit, at L. aforeſaid, in the pariſh and ward aforeſaid, wherefore the ſaid J. E. ſaith he is injured, and hath ſuſtained damages to the value of one thouſand pounds, and therefore he brings ſuit, &c. G. WOOD

Faſter Term, 21 Geo. III.

Declaration for running againſt plaintiff's cart and turning it over, throwing out of it a box of ſtarch which was in it, *per quod*, the box was broke, and the ſtarch ſpoiled.

JOHN ROBERTS *againſt* JACOB TURNER. } MIDDLESEX, to wit. For that whereas the ſaid plaintiff heretofore, to wit, on, &c. at, &c. was lawfully poſſeſſed of divers goods and chattels, to wit, one wooden box or cheſt, and divers, to wit, five hundred pounds weight of ſtarch therein contained of a large value, to wit, of the value of one hundred pounds, which ſaid goods and chattels were then and there lying in a certain cart there then ſtanding and being, to wit, at, &c. and the defendant was alſo poſſeſſed of a certain waggon, and of certain cattle drawing the ſame, and then and there by a certain then ſervant of him the ſaid defendant had the care, government, and direction of the ſaid waggon and cattle, to wit, at, &c. yet the ſaid defendant, then and there by his ſaid ſervant ſo negligently and unſkilfully managed and behaved himſelf in this behalf, and ſo badly, ignorantly, carleſsly, and negligently drove, managed, guided, and governed his ſaid waggon and cattle, that the ſaid waggon of him the ſaid defendant, for want of good and ſufficient care and management thereof, and of the ſaid cattle ſo then and there drawing the ſame as aforeſaid, then and there ſtruck and run againſt the ſaid cart in which the ſaid goods and chattels of the ſaid plaintiff were as aforeſaid with ſuch force and violence, that the ſaid *cart was thereby then and there overſet and turned over, and the ſaid* goods and chattels of the ſaid plaintiff were thereby then and there thrown out of the ſaid cart into the ſtreet there, to wit, at, &c. by means whereof the ſaid box or cheſt of the ſaid plaintiff containing the ſaid ſtarch as aforeſaid was then and there ſplit, fractured, and damaged, broke to pieces, and ſpoiled, and the ſaid ſtarch of the ſaid plaintiff ſo therein contained as aforeſaid was then and there ſplit and thrown out of the ſame into the ſtreet there, *whereby a great part, to wit, one hundred pounds weight of the ſaid ſtarch of a large value, to wit, of the value of twenty pounds, was then and there entirely damaged and ſpoiled, to wit,* at, &c. And whereas, &c. &c. [like the firſt, omitting what is

2d Count

in

in Italic to this mark +, then ſay] and was thereby then and there greatly wetted, dirtied, damaged, leſſened in value, and ſpoiled, to wit, at, &c. V. LAWES.

Michaelmas Term, 29. Geo. III.

Declaration againſt defendant for driving chaiſe againſt the horſe of plaintiff, whereby plaintiff's horſe was killed.

MIDDLESEX, to wit. Nathaniel Fenn, late of, &c. and J. Fenn, late of, &c. were attached to anſwer Robert Tubbs of a plea of treſpaſs on the caſe, &c.; and whereupon the ſaid Robert, by H. B. his attorney, complains; for that whereas the ſaid N. and J. on, &c. at, &c. were poſſeſſed of a certain chaiſe and a certain horſe harneſſed thereto, and were then and there driving the ſaid chaiſe and horſe in and along a certain public king's highway, to wit, at W. aforeſaid, in the ſaid county: And whereas the ſaid Robert, on, &c. at, &c. in, &c. was poſſeſſed of a certain gelding of great value, to wit, of the value of eighty pounds, of lawful money of Great Britain, which ſaid gelding was then and there led, paſſing, and going in and along the ſaid highway; yet the ſaid N. and J. well knowing the premiſes, but contriving and wrongfully and injuriouſly intending to injure the ſaid Robert, on, &c. at, &c. ſo negligently, careleſsly, and unſkilfully guided, directed, and managed the ſaid chaiſe and horſe drawing the ſame, that by and through the careleſſneſs, neglect, and unſkilfulneſs of the ſaid N. and J. in that behalf, the ſaid chaiſe was then and there driven againſt the ſaid gelding of the ſaid Robert, *and the ſhaft or pole of the ſaid chaiſe with great force and violence was forced and driven at and againſt, and into the ſaid gelding of the ſaid Robert*; whereby the ſaid gelding of the ſaid Robert was ſo much wounded and hurt, that the ſaid gelding of the ſaid Robert afterwards, to wit, on, &c. died, to wit, at, &c. whereby the ſaid Robert not only loſt and was deprived of his ſaid gelding, but was forced and obliged to lay out and expend, and did actually lay out and expend a large ſum of money, to wit, the ſum of twenty pounds, in and about the endeavouring to heal and cure the ſaid gelding of the ſaid Robert of the aforeſaid wounds and hurts, to wit, at, &c.: And whereas, &c. &c. [the ſecond count like the firſt, only omitting what is in Italic.] G. WOOD.

Trinity Term, 28. Geo. III.

Declaration negligence againſt an attorney for not getting one A. B. will prepared in time for him to execute it before his death, and by which A. B. intended to give plaintiff his eſtates, &c. whereby plaintiff loſt them, &c.

WORCESTERSHIRE, to wit. Mary Brown complains of Joſeph Whitehouſe, gentleman, one of the attornies of the court of our lord the king, before the king himſelf preſent here in court in his own perſon, in a plea of treſpaſs on the caſe; for that whereas one A. B. deceaſed, before and at the time of his retaining and employing the ſaid defendant as hereafter mentioned, and alſo at and during the neglect and grievance hereafter mentioned, and until and at the time of the death of the ſaid A. B. as hereafter mentioned, was ſeiſed in his demeſne as of fee and

in a certain farm, conſiſting of a meſſuage or dwelling houſe, yard, barn, ſtables, and other outhouſes, and divers, to wit, fifty acres of land and hop ground, with the appurtenances, ſituate and being in the pariſh of, &c. of a large value, to wit, of the value of one thouſand pounds of lawful, &c.: And whereas the ſaid defendant, before and at the time of the committing of the grievance hereafter mentioned, and alſo at the time of his being retained and employed as hereafter mentioned, was an attorney at law, and the buſineſs or profeſſion of an attorney at law then and there exerciſed, followed, and carried on; and being ſuch an attorney at law as aforeſaid, and the ſaid A. B being ſo ſeiſed as aforeſaid, and being alſo dangerouſly ill and indiſpoſed, but of ſound mind and memory, and deſirous of making his laſt will and teſtament, and of thereby deviſing and bequeathing the aforeſaid farm and premiſes with the appurtenances, and his aforeſaid eſtate and intereſt therein, to the ſaid plaintiff, he the ſaid A. B. heretofore, and whilſt he was ſo ſeiſed as aforeſaid, and alſo ill and indiſpoſed to wit, on, &c. at, &c. retained and employed the ſaid defendant in his ſaid buſineſs or profeſſion of an attorney at law for reaſonable reward to him on that occaſion forthwith and without delay to draw up, prepare, and attend him the ſaid A. B. with for execution thereof as his laſt will and teſtament, the neceſſary writing for the purpoſe of his thereby deviſing and bequeathing the aforeſaid farm and premiſes and his ſaid eſtate and intereſt therein to the ſaid plaintiff as aforeſaid, and then and there gave to him the ſaid defendant full and ſufficient inſtructions for preparing ſuch writing, and the ſaid intended deviſe therein, and although the ſaid defendant then and there took and received ſuch inſtructions for the purpoſe of drawing up and preparing, and then and there undertook to draw up, prepare, and attend the ſaid A. B. with ſuch writing as aforeſaid according to his ſaid retainer in that behalf, and although it was then and there the duty of the ſaid defendant to have accordingly drawn up, prepared, and attended with ſuch writing, and although the ſaid A. B lived for a long time after the ſaid defendant was ſo retained and inſtructed as aforeſaid, and for a much more than a reaſonable and neceſſary time for the drawing up, preparing, and attending the ſaid A. B. with ſuch writing as aforeſaid, to wit, for the ſpace of three days, and although the ſaid A. B. was during all that time and until and at the time of his death competent, able, and willing to make ſuch will and deviſe as aforeſaid in favour of the ſaid plaintiff, and would have accordingly made the ſame, and thereby deviſed the ſaid farm and premiſes and his aforeſaid eſtate and intereſt therein to her the ſaid plaintiff if the ſaid defendant had prepared and attended him with ſuch writing as aforeſaid, and although he the ſaid defendant was frequently after he was ſo retained and inſtructed as aforeſaid informed of the ſaid A. B. continuing ſo ill and indiſpoſed as aforeſaid, and being likely ſhortly to die, and although he the ſaid defendant was thereupon earneſtly beſought and entreated as well by and on behalf of the ſaid plaintiff as ſuch intended and expected deviſee

deviſee as aforeſaid as by and on behalf of the ſaid A. B. to draw up, prepare, and attend the ſaid A B. with ſuch writing as aforeſaid for his execution thereof as the laſt will and teſtament of him the ſaid A B. and although he the ſaid defendant might and would after he was ſo returned and employed as aforeſaid, and long before the ſaid A. B died, have drawn up the ſaid intended will and teſtament of the ſaid A. B ſo that the ſame could, might, and would have been properly and legally executed by him the ſaid A. B. as and for his laſt will and teſtament, and the ſaid intended deviſe to her the ſaid plaintiff have been thereby made, and although the ſaid defendant frequently after he was ſo retained and employed as aforeſaid, and before the death of the ſaid A. B promiſed to attend him with ſuch writings as aforeſaid for his execution thereof, and thereby induced the ſaid A B to poſtpone, delay, and omit to make his laſt will and teſtament or to ſend for or employ any other perſon than the ſaid defendant to prepare the ſame or the neceſſary writing for that purpoſe, yet the ſaid defendant had notice, to wit, at, &c., yet the ſaid defendant, well knowing the premiſes, but craftily and deceitfully intending to injure and damnify the ſaid plaintiff, and to fruſtrate and defeat the ſaid intention of the ſaid A B in that behalf, did not nor would without delay after he was ſo returned and employed as aforeſaid, nor within a reaſonable time after ſuch return and employment of him the ſaid defendant as aforeſaid, in the life time of the ſaid A. B draw up, prepare, and attend the ſaid A B with ſuch writing as aforeſaid for his execution thereof as aforeſaid, for his laſt will and teſtament, but on the contrary thereof wrongfully and unjuſtly, and without any juſt cauſe in that behalf, delayed, and wilfully neglected, and omitted ſo to do, and behaved and conducted himſelf with great negligence, careleſſneſs, and inattention in the premiſes, ſo that the ſaid A B was not at any time attended with the opportunity of him the ſaid defendant, either perſonally or otherwiſe, or knew ſuch writing ſent by him the ſaid defendant for execution or in other manner whatſoever, whereby, and by reaſon and means of which premiſes, and of other account whatſoever, the ſaid defendant was not retained and employed as aforeſaid, until after the expiration of a reaſonable time as aforeſaid, to wit, &c. And the ſaid A B. with ſuch writings as aforeſaid, to wit, &c. did not ſooner than the day and year aforeſaid in the declaration mentioned to be ſigned by him as aforeſaid teſtate, and with making any ſuch intended will as aforeſaid, and the ſaid plaintiff hath ever ſince been and ſtill is deprived of the full benefit of the ſaid intended deviſe to her, and the eſtate and premiſes ſo intended to be deviſed to her as aforeſaid deſcended, came to, and were and are veſted in and enjoyed by another and different perſon than her the ſaid plaintiff, to the damage of the ſaid plaintiff of one thouſand pounds, and therefore ſhe brings her ſuit.

V. LAWES.

Mr. Lawes's firſt declaration.

MIDDLE-

Declaration against a poſt-boy for running over plaintiff with a chaiſe, and breaking his legs.

J. T. against W. A. } MIDDLESEX, to wit. For that the ſaid defendant heretofore, to wit, on, &c. at, &c. in, &c. was driving a certain carriage called a chaiſe, and certain cattle then and there drawing the ſame, and then and there had the care, conduct, and management of the ſaid cattle, and of the driving thereof; yet the ſaid defendant then and there ſo negligently and unſkilfully managed and behaved himſelf in the premiſes, and ſo badly, ignorantly, careleſsly, and negligently drove, managed, governed, and guided the ſaid cattle and carriage, that for want of due and proper care in the ſaid driving thereof, the ſaid carriage and the wheels thereof, and one of the ſaid cattle then and there drawing the ſame, then and there ran and ſtruck againſt the ſaid plaintiff with great force and violence, and then and there ſtruck and knocked him down, and then and there ran and paſſed upon and over him the ſaid plaintiff, and broke and fractured the legs of the ſaid plaintiff, and otherwiſe hurt, bruiſed, and wounded him; by means of which ſaid premiſes the ſaid plaintiff became and was, and from thence hitherto hath been, and ſtill is rendered ſick, ſore, lame, and indiſpoſed, and ſo is likely to continue, and hath then been, and ſtill is diabled from doing and tranſacting his affairs and buſineſs, and was and hath been forced and obliged to lay out and expend a large ſum of money, to wit, the ſum of one hundred pounds, and muſt hereafter lay out more in chirurgical and other aſſiſtance, and in and about his cure. [A ſecond Count, only inſtead of a chaiſe call it a poſt chariot.]

V. LAWES.

The accident having happened by negligence, and not wilfulneſs, the action muſt be treſpaſs on the caſe, and not *vi et armis*

Declaration by the "governors, &c. of Bedford Level againſt defendant for negligently conducting his barges, and running foul of the ſluices, &c

THE GOVERNOR OF BEDFORD LEVEL against CRISPE. } NORFOLK, to wit. The governors, bailiffs, and commonalty of the company of conſervators of the great level of the town called Bedford Level complains of John Criſpe, being, &c.; for that whereas the ſaid governors, bailiffs, and commonalty, on the twenty-firſt of Auguſt 1775, were poſſeſſed of and in a certain ſluice or floodgate called Deuver ſluice, of great value, to wit, of the value of ten thouſand pounds, erected, ſtanding, and being in and upon a certain river called the river Ouze, in the pariſh of Deuver, in the ſaid county of Norfolk, and whereas the ſaid John, on the ſame day and year aforeſaid, at the pariſh aforeſaid, in the ſaid county, was poſſeſſed of and in divers, to wit, ten veſſels and lighters then floating and being upon the ſaid river there, which ſaid veſſels or lighters were then and there navigating *by himſelf and* certain ſervants of him the ſaid John, and the ſaid John then and there by *himſelf and* his ſaid ſervants had the care, management, government, and direction of the ſaid veſſels and lighters ſo floating and navigating upon the ſaid river as aforeſaid, yet the ſaid John and his ſaid ſervants ſo careleſsly,

leſsly, negligently, incautiouſly, and unſkilfully ſteered, directed, and managed the ſaid veſſels or lighters of the ſaid John, that the ſaid veſſels or lighters, by and through the mere negligence and unſkilfulneſs of ſteering, managing, and conducting thereof, violently drove againſt and ran foul of the ſaid ſluice of the ſaid governors, bailiffs, and commonalty, and then and there went with ſuch force and violence againſt the gates of the ſaid ſluice, that the ſame were thereby not only greatly broken, ſhattered, and carried away, but the ſaid governors, bailiffs, and commonalty have been obliged to lay out and expend a large ſum of money, to wit, the ſum of thirty pounds, in and about amending and repairing the ſaid ſluice, but all the foundations and other parts of the ſaid ſluice have been and are greatly weakened, damaged, ſhaken, and ſhattered, ſo that the ſluice is in danger of giving way and falling down, to wit, at, &c. [2d Count ſame as the firſt, only leaving out the words in Italic, and making it by his ſervants only]; whereupon the ſaid governors, bailiffs, and commonalty ſay that they are injured, and have ſuſtained damage to the value of one thouſand pounds, and therefore, &c.

Drawn by Mr. CROMPTON.

MIDDLESEX, to wit. Margaret Duff complains of John Charlton, being, &c, for that whereas the ſaid John, on the ſixteenth of December 1786, at Weſtminſter, in the county of Middleſex, was poſſeſſed of a certain chariot or carriage, and certain cattle, to wit, two horſes drawing the ſame; and the ſaid John, by a certain coachman and ſervant of him the ſaid John, then and there had the management, care, and direction of the ſaid chariot or carriage and the ſaid cattle drawing the ſame, to wit, at, &c, yet the ſaid John, not minding or regarding his duty in this behalf, by his ſaid coachman and ſervant, took ſo little and ſo bad care of the ſaid cattle ſo drawing the ſaid chariot or carriage, and of the ſaid chariot or carriage ſo drawn as aforeſaid, that by and through the mere negligence, careleſsneſs, and miſmanagement of the ſaid John and the ſaid coachman or ſervant ſo employed by the ſaid John in that behalf, and for want of due and proper care of the ſaid John and the ſaid coachman or ſervant, with great force and violence drove the ſaid cattle, chariot or carriage againſt, upon, or over the ſaid Margaret as ſhe the ſaid Margaret was then and there in a certain ſtreet and king's highway called Chancery Lane, croſſing over the ſame, to wit, at, &c. whereby the ribs of the ſaid Margaret were broken, her hip bone diſlocated, her arms and head, and divers other parts of her body greatly fractured and bruiſed, and the ſaid Margaret thereby became and was lamed and crippled, ſick, and diſordered, for a long ſpace of time, to wit, from thence until the day of exhibiting the bill of the ſaid Margaret, and during all that time was, and ſtill is wholly hindered and diſabled from following her neceſſary affairs and buſineſſes, and hath been put to great expence, and laid out a large

Declaration againſt defendant for ſo negligently driving his carriage, that he drove overplaintiff and broke her ribs.

a large ſum of money, to wit, the ſum of twenty pounds in and about the ſetting, curing, replacing, and healing of the ſaid ribs, hip bone, and the ſaid arms, head, and other parts of the ſaid body of the ſaid Margaret, of the ſaid fractures and bruiſes, and in and about healing and curing the ſaid Margaret of the ſaid ſickneſſes, lameneſſes, bruiſes, wounds, hurts, and diſorders, to wit, at, &c. to the damage of two hundred pounds. Pledges, &c.

Drawn by J. GRAHAM.

Declaration at the ſuit of the proprietors of a ſtage coach againſt their coachman, for loſing a trunk and its contents, which they were obliged to pay for to the owner

LONDON, to wit John Glazier, &c. complain of Edward Prior being, &c., for that whereas the ſaid plaintiffs, at the time of the committing of the ſeveral grievances hereafter next mentioned, were, and for a long time then laſt paſt had been the owners and proprietors of a certain common ſtage coach or carriage for the carriage of paſſengers, goods, and parcels for hire, from and between London aforeſaid and the city of Bath, in the county of Somerſet, and ſo back again from the ſaid city of Bath to London aforeſaid, for certain reaſonable rates and prices to be paid them for the ſame, to wit, at London aforeſaid, in the pariſh of St. Marylebow, in the ward of Cheap: And whereas whilſt they the ſaid plaintiffs were ſuch owners and proprietors of the ſaid coach or carriage as aforeſaid, and at the time of the committing of the ſeveral grievances hereafter mentioned, the ſaid defendant was the ſervant of them the ſaid plaintiff, well and faithfully to ſerve them in the driving, conducting, and managing of the aforeſaid coach or carriage, and in the carrying of paſſengers therein, and alſo in the carrying, taking, carting, and delivering of the goods and parcels ſent and carried thereby, to wit, at, &c. And whereas afterwards, and whilſt the ſaid E. P. was ſuch ſervant of the ſaid plaintiffs and had the driving, conducting, and management of the aforeſaid coach as aforeſaid, to wit, on, &c. at, &c. one H. S. then a paſſenger in and by the aforeſaid coach, delivered to him the ſaid E. P. ſo being ſuch ſervant of them the ſaid plaintiffs as aforeſaid, and having the driving, &c. of the ſaid coach as aforeſaid, a certain trunk or cheſt containing divers goods and chattels, to wit, two ſhirts, &c. &c. &c. of him the ſaid H. S. of a large value, to wit, of the value of fifty pounds of lawful, &c. to be ſafely and ſecurely carried and conveyed in and by the ſaid coach from a certain place between the aforeſaid city of B. and London aforeſaid, to wit, from Reading, in the county of B. to London aforeſaid, and there, to wit, at London aforeſaid, to be ſafely and ſecurely delivered to him the ſaid H. S., by reaſon of which ſaid premiſe, he ſaid defendant ought ſafely and ſecurely to have carried and conveyed the ſaid trunk or cheſt of the ſaid H. S. with its aforeſaid contents, in and by the ſaid coach from R. aforeſaid to L. aforeſaid, and there, to wit, at L. aforeſaid, to have ſafely and ſecurely delivered the ſame to the ſaid H. S., nevertheleſs the ſaid defendant, not regarding his duty as ſuch ſervant as aforeſaid, but contriving and maliciouſly intending

intending to injure, aggrieve, and damnify the ſaid plaintiffs his maſters as aforeſaid in this behalf, and to put them to great trouble and expence, did not in and by the aforeſaid coach of them the ſaid plaintiffs, ſafely and ſecurely carry or convey the ſaid trunk or cheſt of the ſaid H. S. and its aforeſaid contents ſo delivered to him the ſaid E. P. as aforeſaid, from R. aforeſaid to L. aforeſaid, and there, to wit, at L. aforeſaid, ſafely and ſecurely to deliver the ſame to the ſaid H. S. according to his duty as ſuch ſervant as aforeſaid in that behalf, nor hath he at any time whatſoever delivered the ſame to the ſaid H. S. but on the contrary thereof the ſaid defendant ſo careleſsly and negligently managed and conducted himſelf in his aforeſaid ſervice, and took ſo little and ſuch bad care of the ſaid trunk or cheſt, and its aforeſaid contents, that the aforeſaid trunk or cheſt, and its aforeſaid contents were, after the delivery thereof to him the ſaid defendant as aforeſaid, to wit, on, &c. at, &c. by the mere negligence, inattention, and want of care of the ſaid defendant in ſuch his ſervice as aforeſaid, wholly and totally loſt; whereby they the ſaid plaintiffs ſo being ſuch owners and proprietors of the ſaid coach as aforeſaid, were afterwards, and before the exhibiting the bill of the ſaid plaintiffs, to wit, on, &c. forced and obliged to pay, and they did then and there pay to the ſaid H. S. the owner of the aforeſaid trunk or cheſt and its aforeſaid contents ſo loſt in the manner and by the means aforeſaid, a large ſum of money, to wit, the ſum of ſeventy pounds of lawful, &c. being the value of the ſaid trunk or cheſt and its aforeſaid contents; and they the ſaid plaintiffs, by reaſon and means, and on occaſion of the committing of the grievance aforeſaid by the ſaid defendant, alſo wholly loſt all profit, benefit, and advantage that would have ariſen and accrued to them from the ſafe carriage, conveyance, and delivery of the aforeſaid trunk and its aforeſaid contents in and by their aforeſaid coach, and their ſaid coach is alſo fallen into great diſrepute by means of the aforeſaid negligence of ſaid defendant, their ſaid ſervant as aforeſaid, to wit, at, &c.: And whereas 2d Count. the ſaid plaintiffs, ſo being proprietors and owners of the aforeſaid coach as aforeſaid, and the ſaid defendant, ſo being ſuch ſervant of them the ſaid plaintiffs as aforeſaid, the aforeſaid H. S. theretofore, to wit, on, &c. delivered to them the ſaid plaintiffs, ſo being ſuch proprietors of the ſaid coach as aforeſaid, a certain other trunk or cheſt containing divers other goods and chattels, to wit, twelve other ſhirts, &c. &c. &c. of him the ſaid H. S. of a large value, to be by them ſafely and ſecurely carried and conveyed in and by the ſaid coach from the aforeſaid city of B. to London aforeſaid, and there, to wit, at London aforeſaid, to be ſafely and ſecurely delivered to the ſaid H. S. for certain reaſonable price and reward therefore paid by the ſaid H. S. to them the ſaid plaintiffs, as ſuch proprietors as aforeſaid, to wit, at London aforeſaid, in the pariſh and ward aforeſaid: And the ſaid plaintiffs in fact further ſay, that the ſaid H. S. ſo having delivered to them ſuch laſt-mentioned trunk or cheſt containing as aforeſaid, for the purpoſe aforeſaid; and the ſaid defendant ſo being ſuch ſervant of them the ſaid plain-

tiffs as aforeſaid, the ſaid laſt-mentioned trunk or cheſt, with its aforeſaid contents, was afterwards, to wit, on, &c. at, &c. delivered to, and the ſaid defendant, as ſuch ſervant as aforeſaid, then and there had and received the ſame to be by him ſafely and ſecurely carried and conveyed in and by the aforeſaid coach of them the ſaid plaintiffs, from a certain place between the city of Bath and London aforeſaid, to wit, from *Speenhill*, in the county of Berks, to London aforeſaid, and there, to wit, at London aforeſaid, to be ſafely and ſecurely delivered to him the ſaid H. S.; by means of which ſaid ſeveral laſt-mentioned premiſes, he the ſaid defendant, as ſuch ſervant as aforeſaid, ought ſafely and ſecurely to have carried and conveyed the ſaid laſt-mentioned trunk or cheſt of the ſaid H. S. with its aforeſaid contents, in and by the aforeſaid coach of them the ſaid plaintiffs, from Speenhill aforeſaid to London aforeſaid, and there, to wit, at London aforeſaid, to have ſafely and ſecurely delivered the ſame to the ſaid H. S., nevertheleſs, &c. [as in 1ſt Count from this mark ‡ to the end of

2d Count. the Count, only ſubſtituting *Speenhill* for *Reading*]: And whereas the ſaid plaintiffs, ſo being proprietors and owners of the ſaid coach as aforeſaid, and the ſaid defendant, ſo being ſuch ſervant of them the ſaid plaintiffs as aforeſaid, and having the driving, conducting, and management of the ſaid coach heretofore, to wit, on, &c. a certain other trunk or cheſt containing divers other goods and chattels of a large value, was delivered to the ſaid defendant as ſuch ſervant as aforeſaid, to be by him ſafely and ſecurely carried and conveyed in and by the aforeſaid coach from a certain place between the aforeſaid city of Bath and London aforeſaid, to wit, from Reading, in the county of B. to London aforeſaid, and there, to wit, at London aforeſaid, to be ſafely and ſecurely delivered to the aforeſaid H. S., yet the ſaid defendant, not regarding ‡ his duty as ſuch ſervant as aforeſaid, but contriving and maliciouſly intending to injure and damnify the ſaid plaintiffs in this behalf, did not in and by the ſaid coach of them the ſaid plaintiffs, ſafely and ſecurely carry and convey the ſaid laſt-mentioned trunk or cheſt, and its aforeſaid contents, from R. aforeſaid to L. aforeſaid, and there ſafely and ſecurely deliver the ſame to the ſaid H. S. but on the contrary the ſaid defendant conducted himſelf ſo careleſsly and negligently in his ſaid ſervice, that the ſaid laſt-mentioned trunk or cheſt, and its aforeſaid contents were, after the delivery thereof to him the ſaid defendant for the purpoſe aforeſaid, to wit, on, &c. by and through the careleſsneſs, inattention, and negligence of him ſaid defendant, totally loſt, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, by means whereof they the ſaid plaintiffs were afterwards, to wit, on, &c. forced and obliged to pay, and did actually pay to the ſaid H. S. the owner of the ſaid laſt-mentioned trunk or cheſt, and the goods and chattels therein contained as aforeſaid, another large ſum of money, to wit, the further ſum of ſeventy pounds of like, &c.; and they the ſaid plaintiffs, by reaſon and means, and on occaſion of the committing of the ſaid laſt-mentioned grievance by the ſaid defendant alſo

wholly

wholly loſt all profit, &c. that would otherwiſe have ariſen and accrued to them from the ſafe carriage, conveyance, and delivery of the ſaid laſt-mentioned trunk or cheſt and its contents, in and by their aforeſaid coach, and their ſaid coach is alſo fallen into great diſrepute by means of the ſaid laſt-mentioned negligence of the ſaid defendant, their ſaid ſervant as aforeſaid, to wit, at, &c.: And whereas the ſaid plaintiffs, ſo being the proprietors and owners of the ſaid coach, and the ſaid defendant ſo being ſuch ſervant of them the ſaid plaintiffs as aforeſaid, a certain other trunk or cheſt, containing divers other goods and chattels of a large value, was on the aforeſaid fourteenth day of, &c. delivered to them the ſaid plaintiffs, ſo being ſuch proprietors of the ſaid coach as aforeſaid, to be by them ſafely and ſecurely carried and conveyed in and by their aforeſaid coach from the ſaid city of B. to L. aforeſaid, and there, to wit, at L aforeſaid, to be ſafely and ſecurely delivered to the ſaid H. S for a certain reaſonable price or reward therefore paid by the ſaid H. S. to them the ſaid plaintiffs, as ſuch proprietors as aforeſaid, to wit, at L. aforeſaid, in the pariſh and ward aforeſaid And the ſaid plaintiffs in fact further ſay, that the ſaid defendant ſo being their ſervant as aforeſaid, the ſaid laſt-mentioned trunk or cheſt ſo delivered to them for the purpoſe aforeſaid, with its ſaid contents, was, after the delivery thereof to them as aforeſaid, to wit, on, &c. at, &c. delivered to, and the ſaid defendant, as ſuch ſervant of them the ſaid plaintiffs as aforeſaid, then and there had and received the ſame from them the ſaid plaintiffs his maſters as aforeſaid, to be by him ſafely and ſecurely carried and conveyed in and by their aforeſaid coach from a certain place between the ſaid city of B. to L. aforeſaid, to wit, from Speenhill, in the ſaid county of B. to London aforeſaid, and there, to wit, at L aforeſaid, to be ſafely and ſecurely delivered to the ſaid H. S, yet the ſaid defendant, not regarding, &c. &c. [as in the 3d Count from this mark ‡ to the end of the Count.] Damages three hundred pounds. V. LAWES. 4th Count,

Verdict for plaintiffs for the whole of their demand.

LONDON, to wit. A. B. R. R. and J. B. complain of F D. being, &c., for that whereas the ſaid Edward heretofore, to wit, on, &c. at, &c. was the owner or proprietor of a certain ſhip or veſſel called the Charming Sally, whereof one J. V. was then maſter, and which ſaid ſhip or veſſel was then lying in the port of London, to wit, in the river Thames, and then and there bound from thence on a certain voyage to Liverpool, in the county of L, and the ſaid E. being ſuch owner of the ſaid ſhip or veſſel as aforeſaid, and the ſaid ſhip or veſſel being bound on ſuch voyage as aforeſaid, they the ſaid plaintiffs, on, &c. ſhipped and put on board, Declaration, the plaintiff had delivered to the defendant a caſk of gunpowder to be carried from A to B and had inſured the ſame; the defendant, by *deviating* from the cuſtomary paſſage, was ſhipwrecked, and the gunpowder was entirely loſt The inſurers refuſed to pay the inſurances, and the declaration was drawn againſt the owners of the ſhip for deviating from the uſual paſſage from A to B.

board, and cauſed to be ſhipped and put on board the ſaid ſhip or veſſel a certain large quantity, to wit, one hundred and ten barrels of gunpowder of them the ſaid plaintiffs, to be carried and conveyed therein from the ſaid port of L. to L. aforeſaid for them the ſaid plaintiffs, for certain freight or reward to the ſaid Edward on that occaſion: And the ſaid plaintiffs in fact further ſay, that although the ſaid gunpowder was then and there accordingly received and taken into and on board of the ſaid ſhip or veſſel for ſuch purpoſe as aforeſaid, and although the ſaid ſhip or veſſel did afterwards ſet ſail and proceed from the ſaid port of L. upon her ſaid intended voyage, and with the ſaid gunpowder in and on board her as aforeſaid, and although (1) *the ſaid plaintiffs had made and cauſed to be made certain lawful inſurances by the uſual and cuſtomary writings or policies of aſſurance upon the ſaid gunpowder againſt the perils of the ſeas in that voyage, to wit, a certain inſurance of one hundred and fifty pounds with one J. M. and a certain other inſurance of one hundred and fifty pounds with one J. B. and although it was then and there the duty of the ſaid Edward, as ſuch owner of the ſaid ſhip or veſſel as aforeſaid, to have made ſuch voyage as aforeſaid with the ſaid ſhip or veſſel, by and according to the direct, uſual, and cuſtomary way and paſſage, without deviation or departure from, or delay or hindrance in the ſame, without reaſonable or ſufficient cauſe for ſo doing, in order that the ſaid plaintiffs, ſo being ſuch freighters and proprietors of the ſaid gunpowder as aforeſaid, and having made ſuch aſſurances thereon as aforeſaid, might not loſe or be deprived of the benefit of ſuch aſſurances;* yet the ſaid Edward, not regarding his duty as ſuch owner of the ſaid ſhip or veſſel as aforeſaid, but neglecting the ſame, did not go or make, or cauſe or procure to be made and gone ſuch voyage as aforeſaid with his ſaid ſhip or veſſel, by and according to the direct, uſual, and cuſtomary paſſage, without deviation or departure from, or *delay or hindrance* in the ſame, without a reaſonable or ſufficient cauſe for ſo doing, but neglected and omitted ſo to do, and on the contrary thereof afterwards, and after the ſaid ſhip or veſſel had ſo ſailed and proceeded on her ſaid intended voyage as aforeſaid, and before ſhe completed the ſame, to wit, on, &c. *by one J. V. his then ſervant, and then and there being in and having the command of the ſaid ſhip or veſſel*, wrongfully, and without any ſufficient and reaſonable cauſe whatſoever *for ſo doing*, did deviate and depart from and out of the direct, uſual, and cuſtomary way and paſſage in and of the ſaid voyage from the ſaid port of L. to L. aforeſaid, *with the ſaid ſhip or veſſel* with the ſaid gunpowder of the ſaid plaintiffs in and on board (2) *the ſame*, that is to ſay, from and out of ſuch direct, uſual, and cuſtomary way and paſſage in that voyage up and into a certain river called, &c. and did then and there unneceſſarily, and without ſufficient and reaſonable cauſe *for ſo doing, touch* and ſtay at, &c. in the ſaid river there for a long ſpace of time, to wit, from thence until and upon the twentieth day of, &c. and although the ſaid ſhip or veſſel did

(1) "the ſaid ſhip or veſſel ought in that voyage to have made the ſame, by and according to the direct, uſual, and cuſtomary way and paſſage, without deviation or departure from or in the ſame, without ſufficient and reaſonable cauſe for ſo doing; yet the ſaid plaintiffs in fact further ſay, that the ſaid ſhip or veſſel did not go or make ſuch voyage as laſt aforeſaid,"

(2) "her"

after-

aſterwards proceed and ſail from thence on her ſaid intended voyage to L. aforeſaid, was afterwards, and before her arrival there in that voyage, to wit, on, &c. (3) *by the violence of the winds and waves caſt upon a bank, and was thereby then and there broke, ſhattered, bulged, diſjointed, and* wholly loſt, and the ſaid gunpowder of the ſaid plaintiffs ſo laden and being on board her as aforeſaid, was thereby greatly wetted, injured, damaged, and wholly ſpoiled, whereby they the ſaid plaintiffs but for ſuch deviation (4) *and departure* of the ſaid ſhip or veſſel *from and out of ſuch direct, uſual, and cuſtomary way and paſſage in that voyage as aforeſaid, and for and by reaſon of her having ſo touched and ſtaid at, &c. in the ſaid river called, &c.* could, might, and would by law have recovered and compelled payment of their damages ſo by them ſuſtained by ſuch loſs under and by virtue of (5) *the ſaid ſeveral writings or policies of aſſurance ſo put on board the ſaid ſhip or veſſel as aforeſaid*; yet the ſaid plaintiffs in fact further ſay, that by reaſon and means of ſuch deviation and delay in that voyage as aforeſaid, and on no other account whatſoever, the ſaid inſurances ſo by them made on the ſaid gunpowder as aforeſaid, became and were avoided, and rendered ineffectual and of no avail, and the ſaid ſeveral underwriters or inſurers on thoſe occaſions became and were exonerated and diſcharged from all ſum and ſums of money that would otherwiſe have been due and payable from them under their ſaid ſeveral inſurances for and in reſpect of the ſaid loſs or damage ſo ſuſtained by the ſaid plaintiffs as aforeſaid, and in conſequence thereof they the ſaid plaintiffs failed in the recovery of ſuch ſums of money in certain actions brought by them the ſaid plaintiffs againſt the ſaid J. M. and J. B. as ſuch underwriters or inſurers as aforeſaid on the ſaid inſurances ſo by them made as aforeſaid, without knowing or being apprized of ſuch deviation or delay as aforeſaid, and were forced and obliged to pay, and did in fact pay divers ſums of money, amounting to a large ſum of money, to wit, to the ſum of two hundred pounds, for and in reſpect of the coſts and charges as well of the defence of them the ſaid J. M. and J. B. of ſuch actions as of the proſecution thereof by them the ſaid plaintiffs, to wit, at, &c.: And whereas the ſaid Edward, &c. &c. &c. [Finiſh this Count ſame as the firſt, only omitting what is in Italic, and inſerting in lieu thereof what is in the margin.]

V. LAWES.

(3) "by the dangers and perils of the ſeas"

(4) "as aforeſaid"

(5) "certain writings or policies of aſſurance, to wit, a certain writing or policy of aſſurance before then underwritten and ſubſcribed by the ſaid J. M. for 150l. and a certain other writing or policy of aſſurance before then underwritten and ſubſcribed by the ſaid J. B. for 150l. upon the ſaid gunpowder ſo put on board the ſaid laſt-mentioned ſhip or veſſel as aforeſaid,"

2d Count.

KINGSTON UPON THAMES, to wit. Woodman Wavell, by E. James his attorney, complains againſt Thomas Chitty, in a plea of treſpaſs on the caſe; for that whereas ſaid plaintiff, before and at the time of committing the grievance hereafter *next* mentioned, was lawfully poſſeſſed, *amongſt other lands within the juriſdiction of this court*, of a certain cloſe called Longbottom (1), ſituate, lying, and being in the pariſh of Effingham, in the county of Surry, and within the juriſdiction of this court, and of *the ſaid*

Declaration by maſter againſt his ſhepherd; 1ſt Count, for *ſuffering ſheep* to eat up turnips contrary to expreſs orders. 2d, for permitting it through negligence.

(1) "ſownwith"

ſaid certain tares *ſo* therein growing and being *as aforeſaid*, and the ſaid defendant was then and there in the ſervice of ſaid plaintiff, as his ſhepherd, at and for certain wages or reward; and ſaid plaintiff being ſo poſſeſſed, and the ſaid defendant ſo being his ſervant as aforeſaid, he ſaid defendant, juſt before the grievance hereafter *next* mentioned, to wit, on the firſt of Auguſt, A D. 178[illegible], at the pariſh aforeſaid, in the county and juriſdiction aforeſaid, had, as ſuch ſervant or ſhepherd of ſaid plaintiff as aforeſaid, the ſuperintendance and care of certain *other* ſheep of him ſaid plaintiff *And thereupon afterwards, and whilſt ſaid defendant had the care of ſaid ſheep as ſuch ſhepherd or ſervant of him ſaid plaintiff as aforeſaid to wit, on the day and year aforeſaid, at the pariſh aforeſaid, in the county and juriſdiction aforeſaid, he the ſaid plaintiff duly ordered, enjoined, directed, and commanded ſaid defendant as ſuch ſervant or ſhepherd of him ſaid plaintiff as aforeſaid, that he the ſaid defendant ſhould not permit or ſuffer ſaid ſheep of him ſaid plaintiff to eat, damage, or depaſture upon the ſaid tares ſo growing and being in ſaid cloſe called Longbottom as aforeſaid, but ſhould hinder and prevent them from ſo doing* And ſaid plaintiff in fact ſaith, that although ſaid defendant, according to his duty as ſuch ſhepherd as aforeſaid, ought to and could have there and there hindered and prevented ſaid ſheep of him ſaid plaintiff from eating, damaging, and depaſturing upon the aforeſaid tares of ſaid plaintiff ‡, yet ſaid plaintiff in fact ſaith, the ſaid defendant wholly diſregarding his duty as ſuch ſhepherd or ſervant of and to him ſaid plaintiff as aforeſaid, and contriving and intending to injure him, did not regard or abide by the ſaid orders, directions, and commands of ſaid plaintiff ſo by him given to ſaid defendant as aforeſaid, nor hinder or prevent ſaid ſheep from eating, damaging, and depaſturing upon the aforeſaid tares of him ſaid plaintiff, but wholly neglected ſo to do, and on the contrary thereof after the giving ſuch orders and directions to him ſaid plaintiff as aforeſaid, and before levying of the plaint of ſaid plaintiff in this behalf, and whilſt he the ſaid defendant was ſuch ſervant or ſhepherd of ſaid plaintiff, and had the ſuperintendance and care of his ſaid ſheep as aforeſaid, to wit, on the day and year aforeſaid, and on divers other days and times between that day and the levying the plaint of ſaid plaintiff, at &c. in, &c. aforeſaid, wrongfully and unjuſtly, and contrary to his duty as ſuch ſhepherd or ſervant of ſaid plaintiff as aforeſaid, and without the leave or licence of ſaid plaintiff, ſuffered and permitted ſaid ſheep of him ſaid plaintiff to go and come amongſt, and to graze and depaſture upon, and eat up, conſume, deſtroy, damage, and ſpoil ſaid tares of him ſaid plaintiff, ſo growing in ſaid cloſe called Longbottom as aforeſaid, and being of a large value, to wit, of the value of, &c. to wit, at, &c. in, &c. aforeſaid. *And whereas*, &c. [as in 1ſt Count, till you come to this mark ‡ *ſupra*, omitting what is in Italic, and inſerting what is in the margin, then proceed as follows] Yet ſaid plaintiff in fact further ſaith, that ſaid defendant not regarding his duty as ſuch ſhepherd

1ſt Count.

herd or ſervant of and to him ſaid plaintiff as aforeſaid, but contriving to injure him ſaid plaintiff, did not hinder or prevent ſaid laſt-mentioned ſheep from eating, depaſturing upon, and damaging ſaid laſt-mentioned tares of him ſaid plaintiff, but on the contrary thereof, whilſt ſaid plaintiff was ſo poſſeſſed as aforeſaid, and whilſt ſaid defendant had the ſuperintendance and care of ſaid laſt-mentioned ſheep, as ſuch ſhepherd or ſervant of ſaid plaintiff as aforeſaid, to wit, on the day and year laſt aforeſaid, and on divers other days and times between that day and the levying of the plaint of ſaid plaintiff, to wit, at, &c. in, &c. aforeſaid, ſo negligently behaved and conducted himſelf as ſuch ſhepherd or ſervant of him ſaid plaintiff as aforeſaid, and paid ſo little attention to the ſaid ſheep, that the ſaid ſheep thereby, and for want of due and proper care and attention over the ſame by ſaid defendant, as ſuch ſhepherd or ſervant of ſaid plaintiff as aforeſaid on thoſe ſeveral days and times wandered, ſtrayed and came into and amongſt ſaid laſt-mentioned tares of ſaid plaintiff, and eat up, depaſtured upon, damaged, and ſpoiled the ſame, to wit, at, &c. in, &c. aforeſaid, to the damage of ſaid plaintiff of pounds, for which he brings ſuit, &c. Pledges, &c. V. LAWES.

LONDON, to wit. P W. complains of J N. being, &c; for that whereas the ſaid J heretofore, to wit, &c. ſued and proſecuted out of the court of our lord the king before the king himſelf here, a certain writ of our ſaid lord the king called a *pluries latitat* againſt one B R. directed to the ſheriff of Eſſex, and whereby our ſaid lord the king commanded the ſaid ſheriff as he had theretofore oftentimes commanded him the ſaid ſheriff, that he ſhould take the ſaid B R if he ſhould be found in his bailiwick, and keep him ſafe, ſo that he might have his body before our ſaid lord the king at Weſtminſter on Wedneſday next after three weeks of the Holy Trinity then next, to anſwer the ſaid John in a plea of treſpaſs, and alſo to a bill of the ſaid J againſt the ſaid B. R. for eighty pounds upon promiſes, according to the cuſtom of the ſaid court of our ſaid lord, before the king himſelf to be exhibited, and that the ſaid ſheriff ſhould have there then that writ, which ſaid writ was duly indorſed and marked for bail for thirty-ſeven pounds twelve ſhillings, and being ſo indorſed and marked for bail, was afterwards, and before the return thereof, to wit, on, &c to wit, in, &c. delivered by the ſaid J. to R P. eſquire, then and there being ſheriff of the ſaid county of Eſſex, to be by him executed in due form of law, by virtue of which ſaid writ the ſaid ſheriff afterwards, to wit, on, &c in, &c. duly made out and granted his warrant under his hand and ſeal of office directed to the ſaid P. he the ſaid P. then and there being one of the bailiffs of the ſaid ſheriff, and whereby the ſaid ſheriff then and there commanded him the ſaid P. that he ſhould take the ſaid B. R if he ſhould be found in the ſaid ſheriff's bailiwick, and him ſafely keep, ſo that the ſaid ſheriff might have his the ſaid B. R. body before our ſaid lord the king

Declaration for giving falſe inſtructions to a bailiff, whereby he arreſted an improper perſon.

king at Weſtminſter on the ſaid Wedneſday, &c. then next, to anſwer the ſaid John in a plea and bill aforeſaid, which ſaid warrant was alſo then and there duly marked for bail for thirty ſeven pounds twelve ſhillings, and being ſo marked for bail, the ſaid John afterwards, and before the return of the ſaid writ, delivered, and cauſed the ſaid warrant to be delivered unto him the ſaid P. (he the ſaid P. being then and there ſuch bailiff of the ſaid ſheriff as aforeſaid) to be by him executed: And the ſaid P. in fact further ſaith, that at the time of the ſaid delivery of the ſaid warrant unto him the ſaid P for execution as aforeſaid, and from thence until and at and after the arreſt hereafter next mentioned, he the ſaid P. did not know, but was then and there ignorant of and wholly unacquainted with the perſon of the ſaid B. R. the defendant in the aforeſaid writ and warrant, yet the ſaid John, well knowing ſuch premiſes, and alſo then and there well knowing the perſon of the ſaid B R. the defendant in the ſaid writ and warrant, but contriving to deceive and injure the ſaid P afterwards, and after the delivery of the ſaid warrant unto him the ſaid P for execution as aforeſaid, and before the execution thereof, and alſo before the return of the ſaid writ, and whilſt the ſaid P was ſo unacquainted with the perſon of the ſaid B. R the defendant in the ſaid writ and warrant as aforeſaid, to wit, on, &c at, &c. did falſely, fraudulently, and deceitfully aſſert and affirm unto the ſaid Peter, ſo then and there being ſuch bailiff of the ſaid ſheriff of Eſſex as aforeſaid, and having the ſaid warrant for execution as aforeſaid, the ſaid B. R. the defendant in the ſaid writ and warrant, lived at a certain houſe, to wit, a certain houſe numbered 8, near the turnpike, Stratford (that is to ſay, Stratford, in the county of Eſſex), that he was about five feet ſix inches, ſquare ſet, and had been a militia officer, and that he married a daughter of Mrs Pepperhorn, who then had a farm near Laytonſtone (that is to ſay, Laytonſtone, in the county of Eſſex), and did then and there wrongfully inſtruct, order, and direct the ſaid P. ſo being then and there ſuch bailiff, and ſo having the aforeſaid warrant for execution as aforeſaid, to take and arreſt the perſon anſwering and being of the deſcription ſo by him given as aforeſaid, as and for, and as being the ſaid B. R. the defendant in the aforeſaid writ and warrant, whereupon he the ſaid P. being ſtill ignorant of and wholly unacquainted with the perſon of the ſaid B. R. the defendant in the ſaid writ or warrant, and not then and there knowing that the ſaid perſon ſo by the ſaid J. N. deſcribed as aforeſaid, was not the ſaid B. R. the defendant in the ſaid writ or warrant, but then and there conceiving ſuch perſon to be the ſaid B R. the defendant in the ſaid writ or warrant, did then and there proceed to, and did then and there under and in conſequence, and in purſuance of the ſaid inſtructions, orders, and directions of the ſaid J. and by and through miſtake take and arreſt the ſaid perſon ſo by the ſaid J. deſcribed as aforeſaid, upon and under the ſaid warrant, as and for, and as being the ſaid B. R. the defendant in the ſaid writ or warrant, but in truth and in fact the ſaid P. ſaith, that the ſaid perſon ſo by the ſaid J. deſcribed as aforeſaid,

ſaid, and by him the ſaid P. arreſted, was not the ſaid B. R. the defendant in the ſaid writ and warrant, but was another and different perſon, and of another and different deſcription than the ſaid Benjamin Rutland, the defendant in the ſaid writ and warrant, to wit, one J. R. to wit, at, &c. in, &c.: And ſo the ſaid P. in fact ſaith, that the ſaid J. N. in and by his ſaid aſſertion, affirmation, inſtructions, orders, and directions ſo reſpectively made and given to him the ſaid P. as aforeſaid, then and there, that is to ſay, on, &c. at, &c. did falſely and fraudulently deceive him the ſaid P. that thereby and in conſequence thereof, and of his having ſo taken and arreſted the ſaid J. R. as aforeſaid, he the ſaid P. was afterwards, and before the exhibiting of the bill of him the ſaid P. againſt the ſaid J. N. ſued and proſecuted by the ſaid J. R. in an action or ſuit at law in this court here for ſuch arreſt and falſe impriſonment of him as aforeſaid, and the ſaid J. R. did afterwards recover judgment againſt him the ſaid P. in ſuch action or ſuit for a large ſum of money, to wit, the ſum of twelve pounds ten ſhillings for his damages and coſts in ſuch action, whereof the ſaid J. N. had notice, but refuſed to ſatisfy ſuch judgment, and in conſequence thereof the ſaid J. R. did afterwards commence another action or ſuit againſt him the ſaid P. in this court hereupon the ſaid judgment, and thereby and by reaſon thereof, and of the ſaid recovery ſo had and obtained againſt him by the ſaid J. R. as aforeſaid, he the ſaid P. was afterwards, to wit, on, &c. at, &c. forced and obliged to, and did in fact pay a large ſum of money, to wit, the ſum of fourteen pounds in ſatisfaction and diſcharge of the ſaid judgment ſo obtained againſt him by the ſaid J. R. as aforeſaid, and the ſaid action ſo thereon brought as aforeſaid, and the coſts and charges thereof: And the ſaid Peter alſo ſaith, that by reaſons of ſuch actions being ſo brought againſt him as aforeſaid, he the ſaid P. was neceſſarily forced and obliged to lay out, expend, and pay, and did in fact lay out, expend, and pay divers other ſums of money, amounting in the whole to a large ſum of money, to wit, the ſum of ten pounds, for and on account of his own charges and coſts in and of the defence and ſettlement of the ſaid actions or ſuit, to wit, at London aforeſaid, in, &c. V. LAWES.

Declaration for uſing the furniture in a ready-furniſhed lodging in an unteamantlike manner, and damaging the ſame.

SURRY, to wit. Richard Thornton, by Ralph Hodgſon his attorney, complains of Mary Clarke, in a plea of treſpaſs on the caſe, &c.; for that whereas heretofore, to wit, on, &c. at, &c. and within the juriſdiction of this court, in conſideration that ſaid plaintiff, at the ſpecial inſtance and requeſt of ſaid defendant, had then and there let and demiſed unto the ſaid plaintiff a certain *ready furniſhed lodging, conſiſting of a certain* (1) room or apartment in, and part and parcel of a certain (2) meſſuage or dwelling-houſe, ſituate at, &c. in, &c. within the juriſdiction aforeſaid (3), *and of* certain houſehold furniture (4) *therein being, and with* and by which the ſame were then and there furniſhed, ſhe

(1) "other"
(2) "other"
(3) "with"
(4) "of him ſaid plaintiff in and belonging to ſaid laſt-mentioned room or apartment,"

de-

(5) "to take due and proper care of the aforesaid furniture of the said room or apartment, and to use the same" (6) "last mentioned room or apartment" (7) "with the aforesaid furniture thereof" (8) "last mentioned" (9) "with the aforesaid furniture thereof take due and proper care of the said furniture" (10) "during which time took so little and such bad care of the said furniture, and so negligently behaved and conducted herself in the premises, that the feather bed of the said plaintiff of a large value, to wit, of the value of five pounds of like lawful, current money of, &c. and through the mere negligence, inattention, and want of care, became wetted, &c. to wit, at, &c. to said plaintiff his damage of forty pounds, and therefore he brings, &c.

defendant undertook, &c. said plaintiff (5) *to use and occupy said room and apartment, and the furniture thereof,* in a reasonable and tenant-like manner And said plaintiff in fact further saith, that although the said defendant afterwards, *and before the levying the plaint of said plaintiff,* to wit, on, &c entered into the possession of her said (6) *lodging* so to her let and demised as aforesaid (7), and used and occupied the same under that demise from thence for a long time, to wit, at, &c. in, &c., yet said defendant, not regarding, &c but contriving, &c did not, during the time she so used and occupied the said (8) room and apartment *so to* (9) *her demised aforesaid, use the said furniture thereof in a reasonable and tenant like manner,* according to the tenor and effect of her said promise and undertaking, but on the contrary thereof she the said M. (10) *whilst she was so possessed of the said room or apartment so demised to her as aforesaid, with the aforesaid furniture thereof, and before the levying of said plaintiff,* to wit, on, &c *in the county and jurisdiction aforesaid, did the said furniture in a most unreasonable and tenant like manner in this,* to wit, that *said feather bed was wetted, damaged, crazed and destroyed of said plaintiff of a large value,* to wit, of *twenty pounds of lawful, &c. and in part of the furniture of the said room or apartment so demised to her said defendant as aforesaid, by means whereof the said plaintiff hath wholly lost and been deprived of the use, benefit, and advantage of said feather bed, and the same is become of little or no use or value whatsoever,* to wit, at, &c. &c. And whereas, &c &c [2d Count like the first, omitting what is in Italic, and inserting what is in the margin]

Plaintiff obtained a verdict.

V. LAWES.

Declaration by the owner of a hackney coach against defendant, who called his coach off the stand, and put into the same a quantity of smuggled goods, which being seized by the proper officer, the coach, horses, and harness upon which the same were conveyed were condemned and forfeited.

PUGH *against* LLOYD } LONDON, to wit Richard Pugh complains of Edward Lloyd being, &c., for that whereas the said Richard, before and at the time of the committing of the several grievances hereinafter mentioned, was the owner of a certain licensed hackney coach, numbered 330, and of divers, to wit, two horses drawing and yoked to the same, and of the harness thereto belonging, of great value, to wit, of the value of one hundred pounds, and which said coach and horses, on, &c. at, &c to wit, in the parish of, &c. were in a certain public street called Gracechurch-street, ready to be called and hired by any person or persons wanting the same: And whereas the said Edward, a little before the time of the committing of the grievance hereinafter mentioned, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid,

ſaid, did call the ſaid coach and horſes then and there being in the ſaid public ſtreet for the purpoſe aforeſaid, and afterwards did enter and get into the ſame, and did order and direct the ſaid Richard to drive him the ſaid Edward in his ſaid coach into and along a certain ſtreet called Goſwell-ſtreet, in the ſeveral parithes of St. John, Clerkenwell, and St. Luke, Old-ſtreet, in the county of Middleſex, and thereupon the ſaid Richard, according to the aforeſaid order and direction of the ſaid Edward, and according to his duty as ſuch maſter and owner of ſuch hackney-coach as aforeſaid, was driving his ſaid coach aforeſaid, and horſes with the ſaid Edward in the ſaid coach, according to the direction of the ſaid Edward, whereof the ſaid Edward afterwards, to wit, on, &c. at, &c had notice, yet the ſaid Edward contriving and maliciouſly intending to injure and prejudice the ſaid Richard, and to cauſe him to loſe his ſaid coach and horſes, and the harneſs of the ſaid horſes, did afterwards, to wit, on, &c at, &c. wrongfully, unlawfully, wilfully, and without the knowledge of the ſaid Richard, take with him the ſaid Edward into the ſaid coach, and put and place in the ſaid coach a certain large quantity of tea, to wit, eighty one pounds weight of tea, liable and chargeable with the payment of inland duties and other duties to his ſaid majeſty, and which ſaid tea had, after the twenty-fourth of June 1724, been clandeſtinely run and imported from foreign parts to the city of London aforeſaid, without his ſaid majeſty's duties payable for the ſame having been paid or ſecured as they ought to have been, and without due entry having been made thereof at his majeſty's cuſtom-houſe, according to the form of the ſtatute in that caſe made and provided, and without the ſame having been brought into any warehouſe or warehouſes for that purpoſe, provided at the charge of the importer or importers thereof, and approved of by the commiſſioners of his ſaid majeſty's cuſtoms, or the major part of them for the time being, as by the ſtatute in that caſe made and provided is directed, contrary to the form of the ſaid ſtatute, by reaſon whereof the ſaid tea and the ſaid coach of the ſaid Richard, in which the ſaid Edward had put and placed the ſaid tea as aforeſaid, and the ſaid horſes of the ſaid Richard ſo as aforeſaid yoked and harneſſed to and drawing the ſaid coach of the ſaid Richard as aforeſaid, and which were made uſe of in carrying the ſame tea, were afterwards, and whilſt the ſaid Richard was driving and carrying the ſaid Edward and the ſaid tea in the ſaid coach in and along Goſwell-ſtreet aforeſaid, to wit, on, &c at, &c. arreſted and ſeized by certain officers of his majeſty's exciſe, and for the inland duties upon tea, payable to his ſaid majeſty as forfeited to his ſaid majeſty, or to ſuch other perſon or perſons as by the laws and ſtatutes of this realm are entitled to ſuch forfeitures, and the ſaid coach and horſes of the ſaid Richard being of the value of one hundred pounds as aforeſaid, were afterwards condemned, and thereby then and there became and were wholly loſt to the ſaid Richard And whereas alſo the ſaid Richard, before and at the time of the committing of the grievance hereinafter next mentioned,

2d Count with our permiſſion

tioned, to wit, on the ninth of Auguſt 1783, at, &c. was the maſter and owner of a certain other hackney-coach, numbered 330, and of divers, to wit, two horſes yoked and harneſſed to and drawing the ſaid laſt-mentioned coach, and which ſaid coach and horſes laſt mentioned were then and there of great value, to wit, of the value of one hundred pounds, and which ſaid laſt-mentioned coach of the ſaid Richard was duly licenſed to ply for hire within the city of London: And whereas alſo the ſaid Richard, a little before the time of the committing of the grievance hereinafter next mentioned, to wit, on the ſame day and year aforeſaid, at London aforeſaid, &c. was with his ſaid laſt-mentioned coach and horſes plying for hire on a certain public ſtand for ſuch hackney coaches within the ſaid city of London, to wit, at, &c. And whereas the ſaid Edward, a little before the time of the committing of the grievance hereinafter next mentioned, to wit, on, &c. at, &c. did call the ſaid Richard with his ſaid laſt-mentioned coach and horſes from off the ſaid laſt mentioned ſtand, and did order and direct the ſaid Richard to go with and drive his ſaid laſt-mentioned coach and horſes to a certain houſe of him the ſaid Edward, ſituate, ſtanding, and being in a certain ſtreet called Fenchurch-ſtreet, in the ſaid city of London: And whereas alſo afterwards, and a little before the committing of the grievance hereinafter next mentioned, to wit, on, &c. at, &c. the ſaid Richard did according to the ſaid laſt-mentioned order and direction of the ſaid Edward, and according to his the ſaid Edward's duty as ſuch maſter and owner of the ſaid hackney coach as laſt aforeſaid, go with and drive, and take his ſaid laſt-mentioned coach and horſes to the ſaid houſe of the ſaid Edward, whereof the ſaid Edward afterwards, to wit, on, &c. at, &c. had notice, yet the ſaid Edward contriving and maliciouſly intending to injure and aggrieve the ſaid Richard, and to cauſe him to loſe his ſaid laſt-mentioned coach and horſes, did afterwards, to wit, on, &c. at, &c. get into the ſaid laſt-mentioned coach of the ſaid Richard, and did order and direct the ſaid Richard to drive him the ſaid Edward in the ſaid coach into and along a certain ſtreet called Goſwell-ſtreet, in the ſeveral pariſhes of, &c.; and the ſaid Edward then and there, to wit, at, &c. without the knowledge of the ſaid Richard, did wrongfully and unlawfully take with him the ſaid Edward into the ſaid laſt-mentioned coach of the ſaid Richard, and put and place in the ſaid laſt-mentioned coach a certain large quantity of tea, to wit, eighty-one pounds weight of tea, to be carried in the ſaid coach from the ſaid houſe of the ſaid Edward to Goſwell-ſtreet aforeſaid, he the ſaid Edward not having any proper permit, warrant, or ſufferance to remove the ſaid tea from place to place from any officer or officers of his majeſty, or from any other perſon entitled by the laws and ſtatutes of this realm to give or grant to the ſaid Edward ſuch permit, warrant, or ſufferance, by reaſon whereof the ſaid laſt-mentioned tea, and the ſaid laſt-mentioned coach of the ſaid Richard, in which the ſaid Edward had put and placed the ſaid laſt-mentioned tea as laſt aforeſaid, and the ſaid laſt-mentioned horſes of the ſaid Richard as laſt aforeſaid, yoked

and

and harneſſed to and drawing the ſaid laſt-mentioned coach as laſt aforeſaid, and which were made uſe of in carrying the ſaid laſt-mentioned tea, were afterwards, and whilſt the ſaid Richard was driving and carrying the ſaid Edward and the ſaid tea laſt-mentioned in the ſaid laſt-mentioned coach from the ſaid houſe of the ſaid Edward to Goſwell-ſtreet aforeſaid, to wit, on, &c. at, &c. arreſted and ſeized by certain of his majeſty's officers of exciſe, having power and authority ſo to do, and became and were forfeited to his ſaid majeſty, or to ſuch other perſon or perſons as by the laws and ſtatutes of this realm are entitled to ſuch forfeiture, and the ſaid laſt-mentioned coach and horſes being of the value of one hundred pounds as aforeſaid, thereby then and there became and were wholly loſt to the ſaid Richard; whereupon the ſaid Richard ſays, that he is injured, and has ſuſtained damage to the value of two hundred pounds, and therefore he brings ſuit, &c. Pledges, &c. W. BALDWIN.

Declaration againſt a farrier, for keeping an horſe that had an infectious diſorder in his ſtable, which was only divided from the plaintiff's ſtable by a thin partition of boards, and that by and through defendant's negligence, plaintiff's horſe caught the diſorder, and died thereof.

FOR that whereas the ſaid plaintiff, at the time of the committing of the grievance hereinafter mentioned, was poſſeſſed of a certain horſe of great value, to wit, of the value of two hundred pounds of lawful money of Great Britain, ſtanding and being in a certain ſtable of him the ſaid plaintiff, in the pariſh of, &c. in the ſaid county: *And whereas the ſaid defendant, long before and at the time of committing the grievance hereinafter mentioned, was poſſeſſed of a certain other ſtable, ſituate, ſtanding, and being in the pariſh aforeſaid, contiguous and next adjoining to the ſaid ſtable of the ſaid plaintiff, and only ſeparated and divided therefrom by a thin partition of boards*, yet the ſaid defendant, well knowing the premiſes, but contriving and wrongfully and injuriouſly intending to hurt, injure, and prejudice the ſaid plaintiff, on, &c. at, &c. wrongfully and injuriouſly put into and kept in the ſaid ſtable of him the ſaid defendant a certain horſe which was then and there afflicted with and had a certain infectious diſtemper called the glanders; which ſaid laſt-mentioned horſe he the ſaid George then and there knew to be ſo afflicted and diſordered as aforeſaid; and the ſaid defendant ſo knowing the ſaid laſt-mentioned horſe to be diſtempered and diſordered as aforeſaid, kept and cauſed the ſame to be kept in his ſaid ſtable for a long ſpace of time, to wit, for the ſpace of two months: *And the ſaid plaintiff further ſays, that during all the ſaid time the ſaid defendant kept the ſaid diſtempered horſe in the ſaid ſtable of him the ſaid defendant as aforeſaid, he the ſaid defendant did ſo negligently and careleſsly conduct himſelf in the adminiſtering food, maſhes, and other medicines to the ſaid diſtempered horſe, that by and through the neglect and default of the ſaid defendant, the ſaid food, maſhes, and other medicines run from the ſtable of him the ſaid defendant through the partition into the ſaid ſtable of the ſaid plaintiff, where the ſaid horſe of the ſaid plaintiff was then kept as aforeſaid*, and by means of the premiſes aforeſaid, the ſaid horſe of the ſaid plaintiff afterwards, to

wit,

wit, on, &c. at, &c. caught the ſaid diſtemper called the glanders, and was infected with, and languiſhed and laboured under the ſame for a long ſpace of time, to wit, for the ſpace of three months, during which he the ſaid plaintiff was obliged to lay out and expend, and did lay out and expend a large ſum of money, to wit, the ſum of twenty pounds in and about the endeavouring to cure the ſaid horſe of and from the ſaid diſorder, and the ſaid horſe of the ſaid plaintiff afterwards, to wit, on, &c. died of the ſaid diſtemper ſo caught by him as aforeſaid, to wit, at, &c.: And whereas, &c. [2d Count ſame as firſt, only omitting what is in Italic.] Damage two hundred pounds.

I think the action may be maintained by the plaintiff, for the maxim "Sic utere tuo ut alienum non lædas," ſeems to apply ſtrongly to this caſe. If it could be proved that the defendant was the perſon liable to keep the partition between the two ſtables in good repair, I think it would ſtrengthen the caſe greatly; but even without poſitive proof of that kind, I think the action may be ſupported; for if defendant thought fit to keep a diſtempered horſe in his ſtable, I think he was bound to guard againſt any ill conſequences enſuing to other perſons by it, moving the horſe into the next ſtable, and attending him ſo negligently as to communicate the diſorder, ſeems to afford a good right of action.

F. BULLER.

Declaration againſt a man-midwife, for unſkilfulneſs in lacerating the plaintiff's wife's womb.

MIDDLESEX, to wit. G. L. complains of S. C. then and there being, &c.; for that whereas the ſaid S. now is, and for many years laſt paſt hath been a ſurgeon and man-midwife, and during all the time aforeſaid had exerciſed and carried on, and ſtill uſes, exerciſes, and carries on the art, myſtery, or profeſſion of a ſurgeon and man-midwife, to wit, at Weſtminſter aforeſaid, in the ſaid county of Middleſex, and whilſt the ſaid Samuel ſo uſed, exerciſed, followed, and carried on the ſaid art, myſtery, or profeſſion of a ſurgeon and man-midwife as aforeſaid, to wit, on the day of 1777, at Weſtminſter aforeſaid, in the ſaid county, the ſaid G. employed the ſaid S. for a reaſonable reward to be therefore paid by the ſaid G. to the ſaid S. to deliver one E. L. the wife of the ſaid G. of a certain child with which the ſaid E. L. then and there laboured and was pregnant; and although the ſaid S. did then and there deliver the ſaid E. the wife of the ſaid G. of the ſaid child, yet the ſaid S. then and there ſo negligently, careleſsly, and unſkilfully behaved and governed himſelf in and about the delivery of the ſaid Elizabeth, the wife of the ſaid George, of the ſaid child, that for want of due care and ſkill of the ſaid S. and by and through the mere neglect, default, and unſkilfulneſs of the ſaid Samuel in that behalf, the ſaid L. afterwards, to wit, on the day of 1777, at Weſtminſter aforeſaid, in the ſaid county, became and was afflicted with a certain diſeaſe or malady called a ſtoppage and ſuppreſſion of urine, and with other great pains and anguiſh of body, whereby the ſaid G. for a long ſpace of time, to wit, from thenceforth until the day of exhibiting of the bill of the ſaid George, was deprived of and hath loſt the ſervice, aid, comfort, and aſſiſtance of his ſaid wife: And whereas alſo the ſaid Elizabeth, the wife of the ſaid

2d Count, unfully treating ſuppreſſion of urine.

George, afterwards, to wit, on the day of 17 at Weſtminſter aforeſaid, laboured under and was afflicted with a certain diſorder or malady called a ſtoppage or ſuppreſſion of urine, and the ſaid S. ſo uſing, exerciſing, carrying on, and following the art, myſtery, and profeſſion of a ſurgeon and man-midwife as aforeſaid, the ſaid G. afterwards, to wit, on, &c. 1777, at Weſtminſter aforeſaid, employed the ſaid S. for a reaſonable reward to be therefore paid by the ſaid G to the ſaid S to draw off and drain the urine from and out of the body of the ſaid Elizabeth, and to cure her of the ſtoppage or ſuppreſſion of urine; yet the ſaid S ſo careleſsly, negligently, and unſkilfully behaved and governed himſelf in and about the drawing off and draining the urine from and out of the body of her the ſaid E. in and about the curing her of the ſaid ſtoppage and ſuppreſſion, and performed his operation in this behalf upon the ſaid Elizabeth in ſo careleſs, negligent, and unſkilful a manner, that for want of due care and ſkill of the ſaid S. and by and through the mere negligence, unſkilfulneſs, and default of the ſaid S in that behalf, the uterus or womb of her the ſaid Elizabeth was lacerated and wounded in a great and grievous manner; and the ſaid E. afterwards, to wit, on the ſame day and year laſt aforeſaid, became and was afflicted with a certain diſeaſe or malady called an incontinency of urine, and with other great pains and anguiſh of body, and the ſaid E. hath from thenceforth hitherto remained, and ſtill is afflicted with ſuch laceration or wounding of the uterus or womb, and with the ſaid incontinency of urine, and with other pains, tortures, and anguiſh, and is rendered incurable, to wit, at Weſtminſter aforeſaid, whereby the ſaid George, during all the time laſt aforeſaid, hath been and ſtill is deprived of the ſervice, aid, comfort, and aſſiſtance of his ſaid wife, to wit, at Weſtminſter aforeſaid, in the ſaid county, to the damage of the ſaid George of two thouſand pounds, and thereof he brings ſuit, &c. Pledges, &c.

GEO. WOOD.

MIDDLESEX, to wit. C K. complains of J. C. [The 1ſt Count was in trover, the ſecond was as follows] And whereas one the ſaid plaintiff afterwards, to wit, on, &c. at, &c. in, &c. had delivered to the ſaid defendant a certain other *horſe* of him the ſaid plaintiff, of a large value, to wit, of the value of other twenty pounds, to be by him the ſaid defendant ſafely and ſecurely kept for him the ſaid plaintiff at livery, *at a certain livery ſtables kept by him the ſaid defendant, and ſituate in the pariſh and county aforeſaid*, and although the ſaid defendant then and there had and received the ſaid laſt mentioned horſe of the ſaid plaintiff for the purpoſe laſt aforeſaid, and ought to have accordingly ſafely kept the ſame; yet the ſaid defendant, not regarding his duty in that behalf, but contriving to injure the ſaid plaintiff, did not ſafely and ſecurely keep the ſaid laſt-mentioned horſe ſo delivered for him the ſaid plaintiff, *at the ſaid ſtables of him the ſaid defendant*, but neglected

Declaration againſt a livery ſtable keeper, for delivering plaintiff's horſe to another perſon.

Quere Horſe or mare, if uncertain which, make uſe of the general term *horſe* throughout the declaration.

lected and omitted ſo to do; and on the contrary afterwards, to wit, on, &c. at, &c. (1) *did wrongfully, and without the knowledge and conſent of the ſaid plaintiff, deliver the ſame from and out of his ſaid ſtables to a certain perſon to the ſaid plaintiff unknown, and did then and there ſuffer and permit ſuch perſon to take and carry away the ſaid laſt-mentioned horſe of the ſaid plaintiff, and the ſaid perſon did then and there accordingly take and carry away the ſame, whereby the ſaid laſt-mentioned horſe* became and was, and from thenceforth hitherto hath been, and ſtill is wholly loſt to him the ſaid plaintiff. [3d Count ſame as firſt, only omitting what is in Italic, and inſerting what is in the margin]: And whereas the ſaid plaintiff afterwards, to wit, on, &c. at, &c. delivered to the ſaid defendant a certain other horſe of him the ſaid plaintiff of a large value, to wit, of the value of other twenty pounds of like lawful money, to be kept by him the ſaid defendant for him the ſaid plaintiff at livery, at certain other livery ſtables kept by him the ſaid defendant, and ſituate in the pariſh and county aforeſaid, and to be forthcoming and delivered to the ſaid plaintiff upon requeſt, and although the ſaid defendant then and there had and received the ſaid laſt mentioned horſe of and from the ſaid plaintiff for the purpoſe laſt aforeſaid, and although the ſaid plaintiff afterwards, to wit, on, &c. at, &c. requeſted the ſaid defendant to deliver the ſaid laſt-mentioned horſe unto him the ſaid plaintiff; yet the ſaid defendant did not, nor would then and there deliver the ſame unto the ſaid plaintiff, nor was the ſaid laſt-mentioned horſe then and there forthcoming, but on the contrary then and there was, and always from thence hitherto hath been, and ſtill is wholly loſt to him the ſaid plaintiff, to wit, at, &c. in, &c.

V. LAWES.

(1) "took ſo little and ſuch bad care of the ſaid laſt-mentioned horſe, and behaved and conducted himſelf in ſuch negligence and inattention thereupon in the premiſes, that the ſaid laſt mentioned horſe thereby, and for want of due and proper care in the keeping thereof,"

Caſe for enticing away and Labouring plaintiff's wife.

CHESHIRE, to wit. William Doxy complains of Martha Purley being, &c., for that the ſaid M contriving and maliciouſly intending to aggrieve and injure the ſaid William, and to deprive him of the comfort, company, and fellowſhip of the then and now wife of him the ſaid William, and of her aid and aſſiſtance in his domeſtic affairs and buſineſs heretofore, to wit, on the firſt of November A D. 1787, and from thence daily until the thirtieth of that month, at Frodſham, in the ſaid county, wrongfully and injuriouſly enticed, inſtigated, and perſuaded the ſaid wife of the ſaid William unlawfully, and without the leave or licence, and againſt the will of the ſaid William, to depart, abſent, and ſeparate herſelf from the ſaid William, and from the dwelling-houſe of the ſaid William, and to continue ſo unlawfully abſent, ſeparate, and apart from the ſaid William her huſband, and without his leave, and againſt his conſent, by means of which ſaid unlawful enticement, inſtigation, and perſuaſion of the ſaid M. the ſaid wife of the ſaid William, afterwards, to wit, on the day and year laſt aforeſaid, at F. aforeſaid, without the leave or licence, and againſt the will of the ſaid William, departed, abſented,

ed, and ſeparated herſelf from the ſaid William, and from the dwelling-houſe of the ſaid William, and hath from thence hitherto continued ſo unlawfully abſent, ſeparate, and apart from the ſaid William her huſband, without his leave, and againſt his conſent whereby the ſaid William during all that time hath wholly loſt and been deprived of the comfort, company, and fellowſhip of his ſaid wife, and of her aid and aſſiſtance in his domeſtic affairs and buſineſs, which he, during all that time, ought to have had and enjoyed, and otherwiſe might and would have had and enjoyed with his ſaid wife, to wit, at F. aforeſaid. And whereas heretofore, to wit, on the ſaid thirtieth of November, in the year aforeſaid, at F. aforeſaid, the then and now wife of the ſaid William unlawfully, and without the licence or conſent, and againſt the will of the ſaid William departed and abſented herſelf from the ſaid William; and afterwards, to wit, on the ſame day and year, there went and came to the ſaid M., yet the ſaid M then and there well knowing the premiſes laſt aforeſaid, but contriving and maliciouſly intending to aggrieve and injure the ſaid William, and to deprive him of the comfort, company, and fellowſhip of his ſaid wife, and of her aid and aſſiſtance in his domeſtic affairs and buſineſs, then and there unlawfully harboured and received the ſaid wife of the ſaid William, and hath from thence hitherto wholly refuſed to reſtore her to the ſaid William (although the ſaid M afterwards, to wit, on the day and year laſt aforeſaid, and often ſince, at F. aforeſaid, was requeſted ſo to do by the ſaid William), but the ſaid M. hath wrongfully and injuriouſly ſecreted, harboured, and entertained the ſaid wife of the ſaid William from the ſaid W. her huſband, and during all the time laſt aforeſaid hath wholly loſt and been deprived of the comfort, company, and fellowſhip of his ſaid wife, and of her aid and aſſiſtance in his domeſtic affairs and buſineſs, which he, during all that time, ought to have had, and otherwiſe might and would have had and enjoyed with his ſaid wife, to wit, at F. aforeſaid, to the ſaid William his damage of two hundred pounds, and therefore he brings ſuit, &c. Pledges, &c. S MARRYAT.

Mr Marryat being requeſted to adviſe what proof would be requiſite in this action, and whether in caſe of a one ſhilling verdict, the plaintiff would be entitled to coſts without a judge's certificate, ſubjoined the following opinion

The proper evidence in ſupport of the action, in caſe it ſhould go to the aſſizes, will be, firſt the actual marriage of the plaintiff and his wife, by an examined copy of the regiſter or the parol teſtimony of ſome perſon acquainted with them, who was preſent at its ſolemnization; ſecondly any inſtances of perſuaſion on the part of the defendant to induce the plaintiff's wife to leave him, if ſuch can be proved, if not, the plaintiff muſt reſort to the ſecond Count in the declaration, and prove that his wife having left his houſe and being at the defendant's, he commanded her from the defendant, but the defendant refuſed to reſtore, and detained her againſt his conſent, which will ſupply the proof of direct perſuaſion, and together with the evidence of marriage, be ſufficient to entitle the plaintiff to a verdict in the action. I ſhould, however, obſerve that the wife's declarations (which Mr H. ſeems to rely a good deal upon in his letter) will be no evidence againſt the defendant After eſtabliſhing the above preliminaries at the trial, the plaintiff may proceed to ſhew in aggravation of

of damages, that he and his wife lived happily together previous to separation, and the income of her assistance to him in his tuitionary and business A

cert ficate from the judge, in case of a verdict for less than forty shillings, will not be necessary, as the plaintiff will carry costs. 5 MARRIAGE.

Declaration, plaintiff was the printer of a certain edition of the Bible, to which there were many subscribers, and defendant (who was employed by plaintiff to distribute the work) to hinder the sale of the work caused a number of false bills to be distributed among the subscribers, informing them that the work would never be completed, whereby a number of them withdrew their subscriptions

(1) "in number then and there printing and publishing by him the said John, and"

(2) "same"

(3) "and divers persons had"

(4) "last mentioned"

(5) "therein with all diligence, and intended to go on with and complete the same"

(6) "last aforesaid"

(7) "said last-mentioned"

NORTHUMBERLAND, to wit. John Harrison complains of Robert Garner, for that whereas the said John heretofore, to wit, on, &c. and *at the time of committing the grievance hereafter next mentioned*, was the printer and publisher of a certain edition of the Holy Bible, *with annotations and practical observations on the chapters, then printing and publishing by him the said John, at, &c. in, &c. and which said publication he the said John had thereto fore advertised to the public, and the respective parts thereof out in divers, to wit, ninety two numbers, and the said John was also then and there the printer and publisher* (1) of certain plates or prints to accompany the (2) *said work, and had engaged to publish some of the said prints or plates at the rate or price of two pence each, and the residue thereof at the rate or price of one penny each. And whereas the said John had been engaged in such publication as aforesaid, a great number of persons in and about Newcastle &c. and the neighbourhood and vicinity thereof* (3), became and were subscribers to the said (4) publications, *and intended to and did purchase the same. And whereas at the time of the committing of the grievance hereafter next mentioned, the said Robert was engaged and employed by the said John to deliver out and distribute the said publications to and among such divers, to wit, two hundred and fifty of the said subscribers. And whereas the said John, at the time of committing of the grievance hereafter next mentioned, was possessed of a sufficient number of plates to print the said prints so intended to be sold at two pence each as aforesaid, and the plates from thence the said prints so intended to be sold for one penny each, were by no means worn out or damaged, but were perfect and in good condition, and divers numbers of the said edition of the Bible so published by the said John as aforesaid had been and were published*, and the said John was proceeding (5) *in the publication of the rest of the said work with the greatest diligence, and there was not any circumstance whatsoever to suppose or apprehend but that the same would be gone on with and completed by him, nor had he the said John, at any time before the committing of the grievance hereafter next mentioned, either by hand bills or otherwise, put any delay to what might have happened in the course of the said publications to the distribution thereof, to wit, at, &c.*, yet the said Robert, well knowing *all and singular* the premises (6) aforesaid, but, &c. the said John, and to cause the subscribers to the *aforesaid* (7) publications *to withdraw their subscriptions, and* to cause and procure them and others to purchase the same, and to put a *total* stop to the sale thereof hitherto, to wit, on, &c. *and on divers other days and times between that day and the day of exhibiting of the bill of the said John*, at, &c. *and also at*, &c. did falsely and maliciously assert, declare, publish, and report *not only* to and amongst *such of* the said subscribers

ſcribers *as he the ſaid Robert was engaged to diſtribute* (8) the ſaid publications *to as aforeſaid, but alſo to divers other ſubſcribers to the ſaid publication, as well to and amongſt the inhabitants of the ſaid towns at large* (9), to the effect following (10), that the ſaid publication would (11) *never* be completed (12) by the ſaid John, *and in order more effectually to perſuade and induce the ſaid ſubſcribers and other perſons to believe the ſaid aſſertion and report of the ſaid Robert, and to cauſe the ſaid ſubſcribers to ceaſe to take in the ſaid publication, and the ſeveral other perſons not to purchaſe the ſame, and the reſt, to wit on, &c. wrongfully and maliciouſly to print and publiſh, and cauſe and procure to be printed and publiſhed, and did alſo on the ſame days and times wrongfully and maliciouſly deliver out, diſtribute, and diſperſe, and cauſed and procured to be delivered out, diſtributed, &c. to the ſeveral towns of, &c. publicly and at large, divers, to wit, two thouſand falſe ſcandalous, malicious, and injurious libels or aſperſions to the public of and concerning the ſaid laſt mentioned publication, containing (amongſt other things) to the tenor and effect following, to wit, [here inſert the libel*, whereby and by reaſon of which ſaid premiſes (13) great numbers *and promiſes*, certain perſons, to wit, John Wilkes, &c. and divers, to wit, five hundred more, who were ſubſcribers to the ſaid (14) publications of the ſaid John, from the ſame ſo ſaid ceaſed and diſcontinued to ſubſcribe thereto, and to take in and purchaſe the ſaid (15) publications (which were afterwards continued and gone on with by the ſaid John), and many other perſons who would have become ſubſcribers to and would have purchaſed and taken in the ſaid (16) publication, *giving credit to the aforeſaid falſe aſſertions and report of the ſaid Robert reſpecting the ſame, and the ſame not completely diſproved*, declined to ſubſcribe or take in or purchaſe the ſaid (17) publications, or any part thereof, and the ſale of the ſame was almoſt wholly ſtopt, whereby he the ſaid John not only loſt and was deprived of all profit, benefit, and advantage which would have ariſen and accrued to him from the ſaid ſubſcribers continuing to ſubſcribe and take in the ſaid (18) publications, and from ſuch further ſubſcriptions as for the reaſons aforeſaid, but a very ſmall quantity of the numbers of the ſaid (19) Bible ſo printing published as aforeſaid, and many or the *aforeſaid* (20) plates or prints to the ſame (which he the ſaid John had printed in contemplation of a continuance of the ſaid ſubſcriptions withdrawn as (21) aforeſaid, and of the ſale of the ſaid (22) publication being ſo increaſed as aforeſaid) were left upon the hands of him the ſaid John, and became entirely uſeleſs, and he the ſaid John was alſo, on occaſion, and by reaſon and means of the *ſeveral* grievances *and premiſes* (23) aforeſaid, greatly hurt, injured, and prejudiced in his credit, trade, and buſineſs, to wit, at, &c. And whereas the ſaid John, &c. &c. [Go on with the ſecond Count ſame as the firſt, omitting what is in Italic, and inſerting what is in the margin.] Damages one thouſand pounds.

V. LAWES.

(8) "to"
(9) "and agreat many other perſons"
(10) "to wit,"
(11) "not"
(12) "or going on with"
(13) "laſt-mentioned"
(14) "laſt-mentioned"
(15) "laſt-mentioned"
(16) "laſt" mentioned"
(17) "laſt-mentioned"
(18) "laſt-mentioned"
(19) "laſt-mentioned"
(20) "ſaid laſt-mentioned"
(21) "laſt"
(22) "laſt-mentioned"
(23) "laſt"

2d Count.

LONDON,

Case for enticing journeymen paper manufacturers, to conspire to make for an advance of wages

LONDON, to wit William Phipps complains of Anthony Burges being, &c., for that whereas the said William, for divers years before the committing of the several grievances as by the said Anthony in the two first Counts of this declaration specified, hath been and still is a manufacturer of blue and brown paper, and hath during all that time kept and still keeps a certain mill for the manufacture of such paper, situate at River, in the county of Kent And whereas one Michael K epine, one H. B. one Joseph K one I E one, &c &c &c. before and at the time of the committing of the said several grievances had been and were journeymen, and each of them was a journeyman of the said William Phipps retained by him in his service at certain wages, and employed in different capacities in carrying on his said manufacture in his said mill And whereas before and at the time of the committing of the grievance by the said Anthony in the first Count of this declaration specified, there had been and were certain other paper mills respectively situate as well at Hulley and Maidstone, in the county of K as elsewhere, and before the committing of the said last mentioned grievance, divers journeymen employed at such last-mentioned mills had conspired and combined together to exact an advance to their usual and accustomed wages from their respective masters or employers, to wit, at London aforesaid, in the parish of St. Mary le B w, in the ward of Cheap, yet the said Anthony, well knowing the premises, but contriving and intending to instigate and incite the said several journeymen of the said William Phipps to conspire and combine together for the purpose of exacting from him an advance to their respective wages, and thereby oblige the said William Phipps to pay such advance, or otherwise to deprive him of the service of his said journeymen, and of the means of working his said mill, and carrying on his said manufacture, and of all profit and advantage thereof, and to injure and impoverish the said William Phipps heretofore, to wit, on the thirtieth of January A D 1789, at L. &c. aforesaid, wrongfully and maliciously wrote, and caused and procured to be written a certain letter addressed to the "Journeymen Paper makers at Mr. Phipps, at River Dover, Kent" (meaning such journeymen of the said William Phipps as aforesaid), containing (amongst other things) the matter following, that is to say, "This (meaning the said letter) comes from a well-wisher to the paper trade, and to acquaint you journeymen of this mill (meaning the journeymen employed by the said William P at his said mill as aforesaid) that Hulley-men in the blue and brown way have got their wages advanced to one shilling and sixpence per main a week (meaning that the several journeymen employed at the said mill at Hulley, in the manufacture of blue and brown paper, had, by means of the before-mentioned combination, obtained an advance of one shilling and sixpence per week to their respective wages) Last week was the first time of receiving, as the master (meaning the master of the said last mentioned mill) has been generous enough to comply with the journeymen's demands (meaning

(meaning the demands of the ſaid laſt-mentioned journeymen): now I (meaning himſelf the ſaid Anthony) think, as a perſon that ſend this letter, to acquaint you (again meaning the ſaid journeymen of the ſaid William P.) of this good news, that you (again meaning the ſaid journeymen of the ſaid William P) will *exert* yourſelves to get the ſame wages (meaning exert themſelves to obtain ſuch advanced wages) as their maſter (meaning the maſter of the ſaid mill at Halley) gives. As this is the only blue mill that has advanced their wages (meaning that the ſaid laſt-mentioned mill was the only mill for the manufacture of blue paper where the journeymen employed had obtained an advance of wages) don't let the man (again meaning the ſaid maſter of the ſaid laſt-mentioned mill) that has been ſo generous give more than the reſt of the maſters in his line. If the maſter (meaning the ſaid William P.) don't like to give you (again meaning the ſaid journeymen of the ſaid William P.) the demands as under (meaning as in the ſaid letter, and hereinafter ſpecified) give him (again meaning the ſaid William P.) one fortnight's warning, and make your complaint to Maidſtone and the reſt of the mills (meaning that the ſaid journeymen of the ſaid William P. ſhould apply to the journeymen employed at the before-mentioned mills at Maidſtone and elſewhere, who had been engaged in the before-mentioned combination), and they (meaning the ſaid laſt-mentioned journeymen) will ſupport you (again meaning the ſaid journeymen of the ſaid William P) by ſubſcription, till he (again meaning the ſaid William P) will think proper to give it (meaning ſuch advance of wages as aforeſaid), if you (again meaning the ſaid journeymen of the ſaid William P) give proper warning, and ſtand to your ſtuff like men (meaning if they would ſtrenuouſly adhere to ſuch propoſed combination). This account as under is what the Halley paper-makers (meaning the journeymen employed at the ſaid mill at Halley) have, that you (again meaning the ſaid journeymen of the ſaid William P.) are to ſtand out for and to put it (meaning the ſaid propoſed combination) into execution immediately. Vatman thirteen ſhillings and ſixpence, coucher, twelve ſhillings and ſixpence, layer twelve ſhillings, dry worker twelve ſhillings; beating the ſtuff, fourteen ſhillings and ſixpence. Send an anſwer to the Black Boy, St. Mary Cray, what you (again meaning the ſaid journeymen of the ſaid William P) intend doing in the matter (meaning the matter of ſuch propoſed combination). Direct it to the journeymen paper makers at Mrs. Holmes, at the Black Boy, Saint Mary Cray, Kent." And the ſaid letter of the ſaid Anthony afterwards, to wit, on the day and year laſt aforeſaid, at L. &c aforeſaid, wrongfully and maliciouſly ſent, and cauſed and procured to be ſent and delivered to the ſaid journeymen of the ſaid William P, by means and in conſequence ‡ of which ſaid *letter* laſt-mentioned "inſtigation and incitement," the ſaid M. K. &c. &c &c. ſo then and there being the journeymen and hired ſervants of the ſaid William P. The plaintiff's two other journeymen, A. and

W who are mentioned in the inducement, did not leave h—

retained and employed by him as aforeſaid, afterwards, to wit, on the "ſaid" fourteenth of February A. D. aforeſaid, at L. &c. aforeſaid, conſpired and combined together to exact from the ſaid William P. *an* "ſuch advance as laſt aforeſaid" to their "accuſtomed *reſpective* wages *reſpectively*, and for that purpoſe agreed to ſtrike their work, and leave the employment of the ſaid William Phipps, unleſs he the ſaid William Phipps would conſent to allow them ſuch advance, and in purſuance of their ſaid "laſt-mentioned" conſpiracy, combination, and agreement afterwards, to wit, on the "ſaid" twenty-eighth of February A. D. aforeſaid, at L. &c. aforeſaid, refuſed, and each and every of them refuſed to work any longer for the ſaid William Phipps at their accuſtomed wages, and actually quitted and left the ſervice and employment of the ſaid William Phipps, and continued abſent therefrom for a long ſpace of time, to wit, the ſpace of ſix weeks then next following, whereby the ſaid William P. during all that time, wholly loſt and was deprived of the ſervice of the ſaid M. K. &c. &c. &c. &c. and of the means of working his ſaid mill, and carrying on his ſaid manufacture, and of all profit and advantage thereof, and is otherwiſe greatly injured and impoveriſhed, to wit, at L. &c. aforeſaid: And whereas the ſaid W. P. ſo being ſuch paper-manufacturer, and ſo keeping ſuch mill as aforeſaid, and the ſaid M. K. &c. &c. J. A. &c. and W. being ſuch journeymen retained and employed by the ſaid W. P. as aforeſaid; yet the ſaid Anthony, well knowing the premiſes laſt aforeſaid, but contriving and intending to oblige the ſaid W. P. to pay a certain advance, that is to ſay, an advance of one ſhilling and ſixpence per week to the reſpective wages of his ſaid ſeveral journeymen, or otherwiſe to deprive him of their ſervice, and of the means of working his ſaid mill, and carrying on his ſaid manufacture, and of all profit and advantage thereof, and to injure and impoveriſh the ſaid W. P. heretofore, to wit, on the ſaid thirtieth of January A. D. aforeſaid, at L. &c. wrongfully and maliciouſly inſtigated and incited the ſaid ſeveral journeymen of the ſaid W. P. to conſpire and combine together for the purpoſe of exacting from the ſaid W. P. ſuch advance of one ſhilling and ſixpence a week to their accuſtomed wages reſpectively; by means and in conſequence, &c. [as in the firſt Count from this mark ‡ with the alterations by omitting the words in Italic, and the words contained within inverted commas: And whereas before and at the time of the committing of the grievance hereinafter mentioned, the ſaid William Phipps was a paper-manufacturer, and the ſaid Michael Keeping, &c. [naming all the others who left the plaintiff's ſervice] were the hired ſervants, and each of them was the hired ſervant of the ſaid W. P. retained and employed by him in carrying on his ſaid manufacture, to wit, at L. &c. aforeſaid; yet the ſaid Anthony, well knowing the premiſes laſt aforeſaid, but contriving and intending to deprive the ſaid W. P. of the ſervice of his ſaid laſt-mentioned ſervants, and of the means of carrying on his ſaid manufacture, and of all profit and advantage

2d Count.

3d Count.

advantage thereof, and to injure and to impoverish the ſaid W. P. heretofore, to wit, on the day and year laſt aforeſaid, at L. &c. aforeſaid, wrongfully and maliciouſly inſtigated, excited, and perſuaded the ſaid M. K. &c. [naming thoſe who left the plaintiff] ſo then being ſuch hired ſervants of the ſaid W. P. retained and employed by him as aforeſaid, to depart and abſent themſelves reſpectively from the ſervice of the ſaid William P.; by means and in conſequence of which ſaid laſt-mentioned inſtigation, incitement, and perſuaſion the ſaid M. K. &c. without the licence and conſent of the ſaid William P. then and there wholly departed and abſented themſelves, and each of them departed and abſented himſelf from the ſaid ſervice and employment of the ſaid W. P. and continued abſent therefrom for a long ſpace of time, to wit, the ſpace of ſix weeks then next following; whereby the ſaid W. P. during all that time wholly loſt and was deprived of their ſervice, and of the means of carrying on his ſaid manufacture, and of all right and advantage thereof, and is otherwiſe greatly injured and impoveriſhed, to wit, at L. &c. aforeſaid, to the damage of the ſaid W. P. of three hundred pounds; and therefore he brings ſuit, &c. Pledges, &c. S. MARRYAT.

HYNSON *againſt* JORDISON. } HAMPSHIRE, to wit. Joſeph Hynſon complains of Rob. Jordiſon, being, &c., for that whereas before and at the time of the injury and grievance next hereinafter mentioned, to wit, on the twenty-ſixth of November 1787, he the ſaid Joſeph was and ſtill is poſſeſſed of and in a certain ſhip or veſſel called the Apollo, as of his own ſhip or veſſel, and which ſaid ſhip or veſſel was then floating or lying at anchor in the port or harbour of Southampton, otherwiſe the county of the town of Southampton, otherwiſe the town and county of the town of Southampton, near to the quay of the ſaid harbour or port, into and from which ſaid port or harbour the waters and tides of the ſea have for divers, to wit, ten years paſt, uſually flowed and reflowed, and ſtill do uſually flow and reflow, and which ſaid ſhip or veſſel of the ſaid Joſeph, during the time that the water and tide flowed into and filled the ſaid harbour or port, then and there floated and was born up and buoyed by the ſaid tide of water, and when the ſaid water and tide reflowed from and out of the ſaid port or harbour the ſaid ſhip or veſſel of the ſaid J. then and there remained and reſted upon the mud at the bottom of the ſaid port or harbour, to wit, at anchor in the ſaid county of Hants: And whereas the ſaid ſhip or veſſel of the ſaid Joſeph a little before and at the time of the injury and grievance hereinafter next-mentioned, was floating, and buoyed, and borne up by the tide or water flowing into the ſaid port or harbour, to wit, at anchor aforeſaid, in the ſaid county of Hants; and whereas alſo the ſaid Robert, on the ſame day and year aforeſaid, was poſſeſſed of a certain ſhip or veſſel called the Kitty, then alſo lying and being in the ſaid port or harbour, of which ſaid laſt-mentioned ſhip or veſſel he the

Declaration againſt defendant, for mooring his ſhip ſo cloſe to the ſhip of plaintiff in a harbour, that plaintiff's ſhip was ſqueezed between the ſhip of defendant and the harbour, and when the tide came in fell down and was bulged.

the ſaid Robert then and there had the government, navigation, direction, and care, to wit, at, &c. and the ſaid Robert having the ſaid governance, navigation, direction, and care of the ſaid laſt-mentioned ſhip or veſſel afterwards, to wit, on, &c. at, &c. ſo negligently, careleſsly, and unſkilfully ſteered, governed, navigated, and directed the ſaid ſhip or veſſel of him the ſaid Robert, that the ſaid laſt-mentioned ſhip or veſſel by and through the negligent, careleſs, and unſkilful ſteering, navigating, and directing of the ſame laſt-mentioned ſhip by the ſaid Robert, then and there came and lay ſo near, and cloſe to, and againſt the ſaid ſhip or veſſel of the ſaid Joſeph, that the ſaid ſhip or veſſel of the ſaid Joſeph was thereby forced and confined ſo cloſe to and againſt the quay of the aforeſaid port or harbour, that by reaſon thereof, afterwards, and when the ſaid tide or water reflowed from and out of the ſaid port or harbour, to wit, on the ſame day and year aforeſaid, the ſaid ſhip or veſſel of the ſaid Joſeph on one ſide thereof hung and reſted on the ſaid ſhip or veſſel of the ſaid Robert by the chains of the ſaid ſhip or veſſel of the ſaid Joſeph, and the ſaid ſhip or veſſel of the ſaid Joſeph on the other ſide thereof hung and reſted upon the quay of the ſaid port or harbour by the chains of the ſaid ſhip or veſſel of the ſaid Joſeph, and was thereby ſuſpended, and remained and continued ſo for a long ſpace of time, to wit, for the ſpace of one hour, and was thereby prevented and hindered from lowering, reſting, and lying upon the bottom of the ſaid port or harbour after the ſaid tide or water ſo reflowed as aforeſaid, which it otherwiſe would have done if not ſuſpended as aforeſaid, and by reaſon thereof the ſaid ſhip or veſſel of the ſaid Joſeph afterwards, to wit, on the ſame day and year aforeſaid, fell and tumbled down to the bottom of the ſaid port or harbour by the ſaid chains of the ſaid ſhip or veſſel of the ſaid Joſeph breaking and giving way, and by reaſon thereof the ſaid ſhip or veſſel of the ſaid Joſeph became and was greatly ſtrained, bulged, ſhook, and weakened in the hull thereof, and the maſts, rigging, tackle, furniture, and apparel of the ſaid ſhip or veſſel of the ſaid Joſeph, and thereby became very much damaged, injured, and prejudiced, inſomuch that the ſaid ſhip or veſſel of the ſaid Joſeph became and was of little or no uſe or value to the ſaid Joſeph, but the ſaid Joſeph was forced and obliged to lay out and expend, and did actually lay out and expend a large ſum of money, to wit, the ſum of five hundred pounds of lawful money of Great Britain, in and about the repairing and refitting the ſaid ſhip or veſſel of the ſaid Joſeph, to wit, at and over aforeſaid, in the ſaid county. And whereas alſo afterwards, to wit, on the day and year aforeſaid, he the ſaid Joſeph was poſſeſſed of a certain other ſhip or veſſel called the Apollo, then lying and being in the ſaid port or harbour near to the quay of the ſaid port or harbour, to wit, at and over aforeſaid, in the ſaid county of Hants, unto, into, and from which ſaid port or harbour the waters and tides of the ſea have for divers, to wit, ten years paſt, uſually flowed and reflowed, and ſtill do uſually flow and reflow, and which ſaid laſt-mentioned ſhip or veſſel was

then

then floating in the water there: And whereas alſo the ſaid Robert was then, to wit, on the ſame day and year aforeſaid, poſſeſſed of a certain other ſhip or veſſel called the Kitty, then alſo lying and being at the port or harbour aforeſaid, of which ſaid laſt mentioned ſhip or veſſel he the ſaid Robert then and there had the governance, navigating, direction, and care, to wit, at and over aforeſaid, in the ſaid county of Hants; and the ſaid Robert, having the ſaid governance, navigating, direction, and care of the ſaid laſt-mentioned ſhip or veſſel, afterwards, to wit, on the ſame day and year aforeſaid, and whilſt the ſaid laſt-mentioned ſhip of the ſaid Joſeph was floating on the water of the ſaid port or harbour, ſo negligently, careleſsly, and unſkilfully ſteered, governed, navigated, and directed the ſaid laſt-mentioned ſhip or veſſel of the ſaid Robert, that the ſaid laſt-mentioned ſhip or veſſel of the ſaid Robert, by and through the negligent, careleſs, and unſkilful ſteering of the ſame, came and lay ſo near and cloſe to and againſt the ſaid laſt-mentioned ſhip or veſſel of the ſaid Joſeph, that the ſaid laſt-mentioned ſhip or veſſel of the ſaid Joſeph was thereby forced and confined ſo cloſe and againſt the quay of the ſaid port or harbour, that the ſaid laſt mentioned ſhip or veſſel of the ſaid Joſeph was thereby preſſed and ſqueezed between the ſaid quay of the ſaid port or harbour and the ſaid laſt mentioned ſhip or veſſel of the ſaid Robert, and by means thereof, when the tide and water had flowed from and out of the ſaid port or harbour where the ſaid laſt-mentioned ſhip or veſſel of the ſaid Joſeph was ſo confined as aforeſaid, the ſaid laſt mentioned ſhip or veſſel of the ſaid Joſeph became and was ſuſpended and hung up between the ſaid laſt-mentioned ſhip or veſſel of the ſaid Robert and the quay of the ſaid port or harbour, and remained and continued ſo ſuſpended and hung up until afterwards, to wit, on the day and year aforeſaid, the ſaid laſt mentioned ſhip or veſſel of the ſaid Joſeph gave way, fell, and tumbled down to the bottom of the aforeſaid port or harbour, which it would not have done if not hung up and ſuſpended as laſt aforeſaid, and by reaſon thereof the ſaid laſt-mentioned ſhip or veſſel of the ſaid Joſeph not only became and was greatly ſtrained, bulged, ſhook, and weakened in the hull thereof, and the maſts, rigging, tackle, furniture, and apparel of the ſaid laſt mentioned ſhip or veſſel, that the ſaid laſt-mentioned ſhip or veſſel of the ſaid Joſeph thereby became and was very much damaged, injured, and prejudiced, inſomuch that the ſaid ſhip or veſſel of the ſaid Joſeph laſt-mentioned became and was of little or no uſe or value to the ſaid Joſeph, and the ſaid Joſeph was forced and obliged to lay out and expend, and did actually lay out and expend a large ſum of money, to wit, the ſum of five hundred pounds, of like lawful money, in and about the repairing and refitting the ſaid laſt-mentioned ſhip or veſſel of the ſaid Joſeph, &c. to wit, at, &c., to the damage, &c. Pledges, &c.

J. BURROUGH.

Defendant being part owner of a ship with plaintiff's ship lying at anchor at, &c. was to be freighted to L defendant caused the master to deviate from his intended voyage, and to carry him to V. ship in return was lost

FOR that whereas on, &c. the said plaintiffs, together with the said defendants, were owners of a certain ship or vessel called, &c. whereof one Cornell was then master, to wit, at, &c. and which said ship had been before then sent and consigned to the said defendant from the port of London in Great Britain to the island of Saint C by the said plaintiffs by the consent and direction of the said defendant, in order to be loaded there, to wit, at the island of St. C aforesaid, with goods, &c on freight for the said port of London, and then to be dispatched, and to sail with such goods, &c. so loaden on board her on freight from the island of Saint C. to the said port of L and the said ship was then lying at anchor at the said island of Saint C. to wit, at, &c. in the said island, and was then bound on the said intended voyage from thence to the port of L to carry in her such goods, &c, on freight whereby the said plaintiffs would have gained and acquired to themselves divers large sums of money for the freight of those goods, &c, yet the said defendant, well knowing all and singular the said premises, but contriving, &c. the said plaintiffs in this behalf, and to deprive them of the profits of the said then intended voyage of the said ship while the said ship so lay at anchor at the island of Saint C aforesaid to wit, on, &c went and came on board the said ship without the consent and against the will of the said plaintiffs, or any of them, and unlawfully and unjustly persuaded, procured, directed, required, and enticed the said Connel to deviate from his said intended voyage, and to carry, transport, and convey the said defendant in the said ship from the said island of Saint C aforesaid to Virginia, in America, by means and pretence of which said persuasion, procuration, direction, request, and entitlement, he the said Connell afterwards, to wit, on, &c. deviated from his said intended voyage, and carried, transported, and conveyed the said defendant in the said ship from the island of Saint C. aforesaid to Virginia, in America, by means whereof the said plaintiffs not only lost the whole profits of the said ship's intended voyage to the port of L aforesaid, and of her carrying the said goods, &c on freight to the said port of L but also the said ship was after her arrival at Virginia aforesaid, and before she got back from thence to the said island of Saint C and before her arrival at the port of L aforesaid, to wit, on, &c. totally lost, and never after her said departure from the island of Saint C. aforesaid, came to the use or possession of the said plaintiff, or any of them, to the said plaintiffs their damage of one thousand pounds, &c. *Drawn by* Mr. WARREN.

Declaration against defendant for throwing rubbish in the street, whereby plaintiff's wife and son were injured over an area and

PALACE COURT, to wit. Evan Evans and Ann his wife, by William Railton their attorney, complain against Richard Baggelly in, &c.; for that whereas he the said Richard heretofore, to wit, on, &c and within the jurisdiction of this court, wrongfully and unlawfully caused and procured to be put, placed, cast, and thrown, and so kept and continued in and upon a certain public

public ſtreet or common king's highway there called Butcher Row, divers large quantities of rubbiſh in obſtruction of the ſaid highway, and whereby a certain cart, in which Ann the wife, and ſervant of the ſaid Evan, and one J. E. the ſon and ſervant of the ſaid Evan, during the ſaid obſtruction and nuiſance, to wit, on, &c. in the night-time of that day, at, &c. unavoidably, and without any negligence or default in the driving of the ſaid cart, ran foul of, and upon, and againſt the ſaid rubbiſh ſo there put, placed, and being aforeſaid, whereby the ſaid cart was then and there unavoidably caſt, flung, thrown down, and turned over, and the ſaid Ann and the ſaid J. E. were thereby then and there thrown and fell out of the ſaid cart to and upon the ground, and were thereby reſpectively cut, bruiſed, and wounded, whereby they then and there reſpectively became ſick, ſore, and diſordered, and alſo remained and continued for a long ſpace of time, whereby the ſaid Evan, during all that time, loſt and was deprived of the ſervices and aſſiſtance of his ſaid wife and ſon, and was forced and obliged to lay out and expend a large ſum of money in and about their cure, to wit, at, &c. [And a ſecond Count.]

V. LAWES.

J. C. *againſt* C. B.

FOR that whereas on, &c. at, &c. by a certain indenture [here ſet out the leaſe, to the end of the *reddendum*], and by a certain memorandum or agreement indorſed upon the ſaid indenture, and ſubſcribed with the proper hand of the ſaid defendant, at the time of his ſealing and delivering the ſaid indenture, it was agreed by and between the ſaid plaintiff and the ſaid defendant, that the ſaid plaintiff, his executors, or adminiſtrators, ſhould, during the continuance of the term by the ſaid indenture demiſed, hold in return half a year's rent in hand, as by the ſaid indenture and memorandum, reference being thereunto had, will more fully and at large appear; by virtue of which ſaid demiſe the ſaid plaintiff afterwards, to wit, on, &c. entered into the ſaid demiſed premiſes, with the appurtenances, and became, and from thence hitherto hath been, and ſtill is thereof lawfully poſſeſſed for the ſaid term to him thereof granted as aforeſaid, and during all that time hath held the ſaid demiſed premiſes of the ſaid defendant as his tenant thereof by virtue of the ſaid demiſe and agreement, and by or under no other demiſe, tenure, or holding whatſoever, and the ſaid plaintiff being ſo thereof poſſeſſed, he the ſaid defendant, by one A. B. his agent in that behalf, afterwards, to wit, on, &c. with force and arms, took, ſeized, and diſtrained in and upon the ſaid demiſed premiſes (amongſt other things), divers goods and chattels of the ſaid plaintiff, to wit, three cows, &c. &c. then and there found and being of great value, to wit, of the value of one hundred and fifty pounds of lawful money of Great Britain, and afterwards, to wit, on, &c. ſold the ſaid goods and chattels, being of ſuch value as aforeſaid,

Declaration by tenant againſt his landlord for diſtraining when no rent was due, to recover double the value of the goods diſtrained. 2 W & M. ſeſſ. 5.

by force of the ſtatute in ſuch caſe made and provided for rent pretended to be in arrear and due to the ſaid defendant for the ſaid demiſed premiſes, to wit, for one half year's rent pretended to be due and in arrear to the ſaid defendant, whereas in truth there was no rent in arrear and due from the ſaid plaintiff to the ſaid defendant contrary to the form of the ſtatute in that caſe made and provided, to the damage, &c. G. WOOD.

Declaration for diſtraining beaſts of the plough and ſheep, although there were ſufficient goods and chattels on the premiſes.

CORNWALL, to wit. J. N. complains of P. N. T. S. T. S J. C. being, &c.; for that the ſaid defendants, on, &c. at, &c. in, &c took and diſtrained the beaſts of the plough and ſheep of the ſaid plaintiff, to wit, one bay mare, twenty-five ſheep, two brown ſteers, two heifers, and one cow, then being upon a certain tenement of the ſaid plaintiff, ſituate and being in the pariſh aforeſaid, not for damage feaſant, but for certain rent then ſuppoſed to be due and owing from the ſaid plaintiff to the ſaid P. N. for and in reſpect of the ſaid tenement, although there were then and there goods and chattels of the ſaid John in and upon the tenement aforeſaid ſufficient for a reaſonable diſtreſs for the rent aforeſaid, and afterwards, to wit, on, &c. at &c. in, &c. the ſaid defendants ſold the ſaid beaſts of the plough and the ſaid ſheep of the ſaid J. N. and the money coming and ariſing from the ſale thereof converted and diſpoſed to their own uſe, contrary to the form of the ſtatute in ſuch caſe made and provided, and againſt the peace of our ſaid lord the now king: And whereas, &c. [2d Count ſame as firſt, only ſaying there were two tenements]: And alſo for that whereas the ſaid J. N. on, &c and for divers, to wit, two years, then laſt paſt, held a certain other tenement, with the appurtenances, ſituate and being in the pariſh aforeſaid, as tenant thereof to the ſaid P N. under and by virtue of a certain demiſe thereof by the ſaid P N. to the ſaid J N. made for a term of years, which is not yet expired, under the yearly rent of forty-eight pounds, of which rent there was then due and in arrear to the ſaid P. N. from the ſaid John the ſum of ſeventy-nine pounds, and no more; yet the ſaid defendants, well knowing the premiſes laſt aforeſaid, but contriving and wrongfully and injuriouſly intending to injure the ſaid plaintiff, and not regarding the ſtatute in ſuch caſe made and provided, on, &c. at, &c. in, &c. took and diſtrained divers cattle, goods, and chattels, of the ſaid plaintiff, of a much greater value than the arrears of the ſaid rent, to wit, of the value of two hundred pounds, in and upon the laſt-mentioned tenement for the ſaid arrears of rent, and thereby took a great and unreaſonable diſtreſs for the ſaid arrears of rent, contrary to the form of the ſtatute in ſuch caſe made and provided, and againſt the peace of our ſaid lord the now king, and to the damage of the ſaid plaintiff of two hundred pounds, &c.

F. BULLER.

2d Count.

3d Count.

LICARLET *against* JOHNSON.

Declaration against defendant for using a cement or composition which had been granted to the plaintiff by letters patent, without the plaintiff's leave.

FOR that whereas by a certain act of parliament made and passed in the parliament of our sovereign lord George the Third, now king of Great Britain, &c. at a session thereof holden at Westminster, in the county of Middlesex, in the sixteenth year of his reign, intituled, "An act for vesting in John Licarlet, clerk, his executors, administrators, and assigns, the sole use and property of a certain composition or cement of his invention throughout his majesty's kingdom of Great Britain, and in the colonies and plantations abroad, for a limited time," reciting, amongst other things, that his most excellent majesty king George the Third, by his letters patent under the great seal of Great Britain, bearing date at Westminster, the third day of April, which was in the thirteenth year of his reign, did give and grant to the said J. L. of, &c. his executors, administrators, and assigns, his sole priviledge and authority to make, use, exercise, and vend a certain composition or cement for all the branches concerning buildings, to which the same was applicable within that part of Great Britain called England, his dominion of Wales, and the town of Berwick upon Tweed, and in any of his majesty's colonies and plantations abroad, for the term of fourteen years, the sole privilege and advantage of making, using, exercising, and vending the said composition or cement mentioned in the said letters patent, with the additions and improvements for the granting of the said letters patent, and after the passing of the said act made therein within the kingdom of Great Britain and his majesties colonies and plantations abroad from and after the passing of the said act was, and by the said act were declared to be vested in him the said plaintiff, his executors, administrators, and assigns, for and during the term of eighteen years from thenceforth next ensuing, and fully to be complete and ended. And the said plaintiff further saith, that in pursuance of the said act of parliament, he the said plaintiff did particularly ascertain and describe the nature of his invention in its improved state at the time of the passing of the said act, and in what manner the same was to be performed, by an instrument in writing under his hand and seal, and caused the same to be inrolled in the high court of chancery within four calendar months after the passing of the said act, to wit, at, &c. in, &c. yet the said defendant, well knowing the premises, but contriving and fraudulently and maliciously intending to hurt, injure, and prejudice the said plaintiff, and to deprive him of the profit and benefit of the said sole privilege of making, using, and exercising the said composition or cement mentioned in the said letters patent, with the additions and improvements made therein, vested in him by the said act of parliament, after the passing of the said act, and during the term of eighteen years therein mentioned, to wit, on, &c. and on divers other days and times between that day and the day of exhibiting of the bill of the said plaintiff, at, &c. in, &c. unlawfully and unjustly, and without the licence, consent, or agreement of the said plaintiff in writing under his hand and seal

first

first had and obtained in that behalf, did unlawfully make, uſe, and put in practice the ſaid invention of the ſaid plaintiff, to wit, at, &c. and thereby prevented and hindered the ſaid plaintiff from having and enjoying the whole profit and benefit thereof, and deprived him of great gain and advantage which would have ariſen therefrom, contrary to the form of the ſaid act of parliament: And the ſaid plaintiff further ſaith, that the ſaid defendant, again contriving and fraudulently and maliciouſly intending as aforeſaid, after the paſſing of the ſaid act of parliament, and during the ſaid term of eighteen years therein mentioned, to wit, on, &c. [ſame as firſt Count from hence, only inſtead of the words "put in practice the ſaid invention" ſay "put in practice part of the ſaid invention," and omitting the word "unlawfully"]: And, &c. &c. [3d Count ſame as 2d Count, only inſtead of the words "did make, uſe, and put in practice," ſay "did counterfeit, imitate, and reſemble."] [4th Count ſame as ſecond, only inſtead of the words "make uſe of and put in practice" ſay "did make and cauſe to be made additions unto the ſaid invention of the ſaid plaintiff, thereby to pretend himſelf the inventor, and the defendant did thereby pretend himſelf to be the inventor thereof," and then add "whereby the ſaid plaintiff was greatly prevented and injured in the profit and benefit of his invention of, &c." [as before.] [5th Count ſame as before, only inſtead of the words "make uſe of and put in practice" ſay "did make and cauſe to be made ſubſtractions from the ſaid invention of the ſaid plaintiff, whereby to pretend himſelf the inventor thereof; *per quod*, &c.]

2d Count.

3d Count.

J. WALLACE.

Plaintiff obtained a verdict. Sittings after Hilary, 18. Geo. III. at Weſtminſter.

Declaration for aſſaulting one A. B. who was indebted to the plaintiff, and was in the cuſtody of the bailiff.

TOWN AND COUNTY OF THE TOWN OF KINGSTON UPON HULL, to wit. Francis Hardy complains of Michael Metcalfe, being, &c.; for that whereas one C. on the eighteenth of June 1777, at, &c. was and ſtill is indebted to the ſaid Francis in a large ſum of money, to wit, in the ſum of two hundred pounds, upon and by virtue of his certain writing-obligatory, ſealed with the ſeal of the ſaid C. bearing date the fourteenth of July 1775: And whereas the ſaid F. afterwards, to wit, on the eighteenth of June 1777, for the recovery of the ſaid debt, proſecuted out of the court of our ſaid lord the king, before the king himſelf, the ſaid court then and ſtill being at Weſtminſter, in the county of Middleſex, a certain writ of our ſaid lord the king of *latitat*, directed to the ſheriff of the town and county of the town of K. upon H. by which ſaid writ the ſaid lord the king commanded the ſaid ſheriff that he ſhould take the ſaid C. and one John Doe, if they ſhould be found in his bailiwick, and ſafely keep them, ſo that the ſaid ſheriff might have their bodies before our ſaid lord the king on, &c. to anſwer to the aforeſaid F. of a plea of treſpaſs, and alſo that the ſaid C. might anſwer to a bill

of

of the ſaid F. according to the cuſtom of the court of our ſaid lord the king to be exhibited for two hundred pounds debt, and that the ſaid ſheriff ſhould have there that writ, before the iſſuing of which ſaid writ an affidavit of the debt and cauſe of action for which the ſaid writ was ſo ſued out by the ſaid Francis againſt the ſaid C. was in due manner made and filed, according to the form of the ſtatute in ſuch caſe made and provided, to ſhew the cauſe of action in the ſaid writ ſpecified, according to the cuſtom and uſage of the ſame court, and by the ſaid affidavit the ſum of one hundred and ninety-two pounds ten ſhillings was ſworn to be due from the ſaid C. to the ſaid F.: And the ſaid F. further ſays, that the ſaid writ ſo indorſed as aforeſaid, afterwards and before the return thereof, to wit, on, &c. at, &c. was delivered to one P. then ſheriff of the ſaid town and county aforeſaid, to be executed in due form of law; by virtue of which ſaid writ, and for the execution thereof, the ſaid D. then ſheriff of the ſaid town and county, afterwards and before the return of the ſaid writ on the ſame day and year laſt-mentioned, at, &c. made his certain warrant in writing, ſealed with the ſeal of his office of ſheriff of ſaid town and county, delivered to one E. the bailiff of the ſaid ſheriff; by which ſaid warrant ſaid ſheriff, by virtue of his majeſty's writ to him directed, commanded the ſaid bailiff that he ſhould take the ſaid C. if he ſhould be found in his bailiwick, and him ſafely keep, ſo that the ſaid ſheriff might have his body before his majeſty at Weſtminſter, on, &c. to anſwer to the aforeſaid F. of the plea and bill aforeſaid; by virtue of which ſaid warrant he the ſaid E. afterwards, and before the return of the ſaid writ, to wit, on the ſame day and year laſt aforeſaid, at, &c. and within the bailiwick of the ſaid ſheriff, took and arreſted the ſaid C. by his body, and had him in his cuſtody under that arreſt; and the ſaid C. ſo being in cuſtody under the ſaid arreſt, the ſaid M. contriving and fraudulently intending to injure the ſaid F. in this behalf, and to deprive him of the benefit of the ſaid arreſt, and of his remedy for recovering his debt aforeſaid, afterwards, and before the return of the ſaid writ, to wit, on the ſame, &c. at, &c. with force and arms made an aſſault on the ſaid E. then and there being bailiff of the ſaid ſheriff, and having and detaining the ſaid C. in cuſtody under the ſaid arreſt as aforeſaid, and took and reſcued the ſaid C. ſo being in the cuſtody of the ſaid E. the ſaid bailiff under the ſaid arreſt as aforeſaid, from and out of the ſaid arreſt, and from and out of the cuſtody of the ſaid E. and againſt the will of the ſaid E. and cauſed and permitted the ſaid C. to eſcape and go at large whither he would (he the ſaid F. not being then, or at any time ſince, paid or ſatisfied his debt aforeſaid), ſo that the ſaid ſheriff could not have the body of the ſaid C. before our ſaid lord the king at Weſtminſter on the day mentioned in the ſaid writ, as he was thereby commanded; and the ſaid C. immediately after the ſaid reſcue made as aforeſaid, ſecreted and concealed himſelf in places unknown to the ſaid F. ſo that the ſaid C. could not be

taken and arreſted by any proceſs of law, by reaſon whereof the ſaid F. hath been prevented and hindered of his juſt remedy for the recovering his ſaid debt againſt the ſaid C. and is very likely entirely to loſe the ſame; wherefore the ſaid F. ſays that he is injured, and hath ſuſtained damage to the value of two hundred pounds, and therefore, &c.

Drawn by MR. CROMPTON.

Declaration for engraving and publiſhing a mezzotinto print, copied from the original engraved by plaintiff.

LONDON, to wit. Thomas Watſon complains againſt Robert Sayer and John Bennett being, &c.; for that whereas the ſaid Thomas now is, and for divers, to wit, ſix years laſt paſt, has been an engraver in mezzotinto, to wit, at, &c. and during all the time aforeſaid has engraved, and ſtill doth engrave prints in mezzotinto for ſale and profit, and during all the time aforeſaid hath engraved, and ſtill doth engrave prints in mezzotinto, and by reaſon thereof hath made and gotten to himſelf great emoluments, profits, and advantages, and a comfortable livelihood and ſubſiſtence thereby, to wit, at, &c.: And whereas before the committing the injury hereinafter next mentioned, to wit, on the firſt day of June 1775, to wit, at, &c. he the ſaid Thomas had engraved for profit a certain mezzotinto fancy portrait print in the character of Eliſha, with the name of the ſaid Thomas thereto as the engraver thereof; from which ſaid engraving divers, to wit, five hundred prints, before the committing of the injury hereafter next mentioned, to wit, on the ſaid firſt of June 1775, at, &c. had been printed and publiſhed with the name of the ſaid Thomas thereto, as the engraver thereof, and at the time of committing the injury next after mentioned, were continued to be publiſhed and ſold for profit, that is to ſay, at, &c.; yet the ſaid R. and John, well knowing the premiſes, but contriving and wrongfully and injuriouſly intending to injure and prejudice the ſaid Thomas in his buſineſs of an engraver, and to cauſe him the ſaid Thomas to be deemed and thought an unartificial and unſkilful workman in his ſaid buſineſs of an engraver, and to prejudice him in the good opinion of perſons who would otherwiſe have employed him in his ſaid buſineſs, on the firſt of October 1775, at, &c. wrongfully and injuriouſly, and without the leave and conſent of the ſaid Thomas, made and cauſed to be made a certain other engraving of a mezzotinto fancy portrait print in the character of Elitha, to imitate the ſaid engraving of the ſaid Thomas, and with the name of the ſaid Thomas thereto as the engraver thereof, and on the ſame, &c. and on divers other days and times between, &c. at, &c. wrongfully and injuriouſly, and without the leave and conſent of the ſaid Thomas, printed and publiſhed, and cauſed and procured to be printed and publiſhed divers, to wit, five hundred prints from the ſaid laſt-mentioned engraving, as and for prints taken from the ſaid engraving of the ſaid Thomas, and with the ſaid Thomas's name affixed thereto as the engraver thereof, which ſaid engraving and prints of the ſaid R. and J. were much

worſe

worſe than and inferior to the engraving of the ſaid Thomas, and the ſaid prints printed and publiſhed therefrom; by means whereof the ſaid Thomas is brought into great diſgrace, ſcandal, and diſcredit, and is greatly injured in his name, fame, credit, and reputation as a ſkilful artiſt and engraver, to wit, at, &c. [2d Count ſame as firſt Count to gravamen]; yet the ſaid Robert and John, well knowing the premiſes laſt aforeſaid, but further contriving and wrongfully and injuriouſly intending to injure the ſaid Thomas in the buſineſs of an engraver, and to cauſe him the ſaid Thomas to be thought an unartificial and unſkilful workman in his ſaid buſineſs of an engraver, and to prejudice him in the good opinion of perſons who would otherwiſe have employed him in his ſaid buſineſs, on the ſaid firſt day of October 1775, and on divers, &c. at, &c. wrongfully and injuriouſly publiſhed, and cauſed to be publiſhed divers, to wit, five hundred other mezzotinto prints in the ſaid character of Eliſha, as and for prints taken from the ſaid laſt-mentioned engraving of the ſaid Thomas, and with his name affixed thereto as the engraver thereof, which ſaid laſt-mentioned prints of the ſaid R. and J. were much worſe than and inferior to the ſaid laſt-mentioned prints printed and publiſhed from the ſaid laſt-mentioned print of the ſaid Thomas; by means whereof the ſaid Thomas is brought into great diſgrace, ſcandal, and diſcredit, and is greatly injured in his name, fame, and reputation as a ſkilful artiſt and engraver, and is greatly hurt in the profits and emoluments of his ſaid buſineſs as engraver, to wit, at, &c. to the damage, &c.

F. BULLER.

MIDDLESEX, to wit. R. N. complains of W. H. being, &c.; for that whereas he the ſaid R. on, &c. to wit, at the pariſh of, &c. in the county of Middleſex aforeſaid, at the ſpecial inſtance and requeſt of the ſaid W. let to hire and delivered to the ſaid W. a certain mare of the ſaid R. to carry the ſaid W. a certain journey, to wit, from the ſaid pariſh, &c. in, &c. to Dartford, in the county of Kent, and from thence, &c. for a certain hire or reward to be therefore paid by the ſaid W. to the ſaid R. for the uſe and hire of the ſaid mare; and although the ſaid W. then and there had and received the ſaid mare of him the ſaid R. to ride, go, and perform the ſaid journey as aforeſaid, to wit, at, &c. aforeſaid; yet the ſaid W. contriving, &c. wrongfully to injure the ſaid R. in this behalf, he the ſaid W. afterwards, to wit, on the ſame, &c. did wrongfully and injuriouſly ride on, and go and travel with the ſaid mare much farther than from the pariſh aforeſaid to Dartford aforeſaid, in the county of K. aforeſaid, and from Dartford aforeſaid, in the county of K. aforeſaid, to the pariſh aforeſaid, to wit, from the pariſh aforeſaid to Graveſend, in the county of K. aforeſaid, and from thence back to the pariſh aforeſaid, being much further, to wit, thirty miles further than he ought to have went with or rode the ſaid mare, to wit, at, &c. and did

Declaration againſt defendant for *riding a horſe more* farther than agreed for, and ſo immoderately as to ſtrain his fore legs.

did then and there, to wit, on, &c. ſo grievouſly and immoderately, unreaſonably, inordinately, and exceſſively ride, work, and labour the ſaid mare, and uſe the ſaid mare in ſuch an immoderate and unreaſonable manner, and then and there took ſo little and ſuch bad care of the ſaid mare, that the ſaid mare being of a large value, to wit, of the value of forty pounds; *by means of the riding her ſo much further than the journey for which he the ſaid R. let to hire to the ſaid W. and alſo by* means of the aforeſaid bad uſage, and of the grievous, inordinate, unreaſonable, and immoderate labouring and working of the ſaid mare in manner and form aforeſaid, became and was very much hurt and ſtrained, to wit, in her fore legs and fore feet, and alſo by means of the premiſes aforeſaid the ſaid mare was and is otherwiſe greatly lamed, broken down, diſtempered, and greatly damaged and rendered unfit for uſe, and entirely ſpoiled, to wit, at, &c.: And whereas the ſaid R. afterwards, to wit, on, &c. at, &c. at the like ſpecial inſtance and requeſt of the ſaid W. let to hire and delivered to the ſaid W. a certain other mare of him the ſaid R. to go and perform a certain other journey, to wit, a journey of fifteen miles or thereabouts, from the pariſh of, &c. and back again to the pariſh aforeſaid, at and for certain hire or reward to be therefore paid by the ſaid W. to the ſaid R. for the uſe and hire of the ſaid laſt-mentioned mare: And the ſaid R. in fact ſaith, that although the ſaid R. then and there had and received the ſaid laſt-mentioned mare of him the ſaid R. in good condition to go and perform the ſaid laſt-mentioned journey as aforeſaid, to wit, at, &c.; yet the ſaid W. contriving, &c. the ſaid R. in this behalf, he the ſaid W. on, &c. and before he returned the ſaid laſt mentioned mare to the ſaid R. did wrongfully and unjuſtly ride on, and go and travel with the ſaid laſt-mentioned mare from, &c. much farther than fifteen miles, to wit, to Graveſend aforeſaid, in the county of K. aforeſaid (being at a great diſtance from the pariſh aforeſaid, to wit, the diſtance of twenty-five miles), and alſo to divers other places to the ſaid R. unknown, to wit, at, &c. and from thence back again to the pariſh aforeſaid, and did then and there, to wit, on, &c. at, &c. ſo grievouſly, &c. &c. [as in the firſt Count to the end, omitting what is in Italic]: And whereas he the ſaid R. afterwards, to wit, on, &c. at, &c. at the like, &c. let to hire and delivered to the ſaid W. a certain other mare of him ſaid R. to go and perform a certain journey at and for certain hire or reward to be therefore paid by the ſaid W. to the ſaid R. for the uſe and hire of the ſaid laſt-mentioned mare: And the ſaid R. in fact ſaith, that although, &c. &c. [as before]; yet the ſaid W. contriving, &c. he the ſaid W. afterwards, and whilſt he had the ſaid laſt-mentioned mare for the purpoſe aforeſaid, to wit, on, &c. and before he returned the ſaid laſt-mentioned mare to the ſaid R. did wrongfully and unjuſtly ride, uſe, work, and labour the ſaid laſt-mentioned mare in an exceſſive, &c. manner, and then and there took ſo little and ſuch bad care of the ſaid laſt-mentioned mare, &c.

ad Count, a certain number of miles.

ad Count, a certain journey.

&c. &c. [as in the firſt Count, omitting the words in Italic]. Damages fifty pounds. J. MORGAN.

LONDON, to wit. G. H. complains of W. R. being, &c.; for that whereas the ſaid W. B. on, &c. at, &c. knowingly and wilfully kept a certain dog called a bull-dog, which ſaid dog was uſed and accuſtomed to bite mankind, he the ſaid W. R. then and there well knowing that the ſaid dog was ſo uſed and accuſtomed to bite mankind as aforeſaid, which ſaid dog being then the dog of the ſaid W. R. on, &c. at, &c. did furiouſly ſeize upon and vehemently bite the ſaid G. H. and by ſo ſeizing upon and biting him the ſaid G. H. did ſo greatly tear, lacerate, mangle, and mar the face of him the ſaid G. H. and other parts of the body of the ſaid G. H. and otherwiſe ſo greatly hurt, injure, and wound him, that the ſaid G. H. was not only thereby rendered in great terror and danger of his life, and loſt large quantities of his blood, but the ſaid G. H. was and is very much bruiſed, wounded, maimed, and disfigured in his face, and by reaſon of the ſaid bites, and of the hurts, injuries, wounds, mars, and lacerations thereby occaſioned, the ſaid G. H. was and became ſick and diſordered, and ſo remained ſick and diſordered continually from that time until the exhibiting the bill of the ſaid G. H. and during all that time ſuffered and underwent great and excruciating pains and tortures both of body and mind, and was forced to lay out and expend, and hath actually laid out and expended a large ſum of money, to wit, the ſum of fifty pounds of lawful money of Great Britain, in and about his endeavours to effect a cure in this behalf, and to heal the ſaid hurts, injuries, mars, and lacerations, and hath alſo, during the ſaid time, been wholly prevented and hindered from following and tranſacting his lawful affairs and buſineſs, and been otherwiſe put to great inconvenience, to wit, at, &c. Damage. *Drawn by* MR. CROMPTON.

Declaration againſt defendant for keeping a dog he knew to be accuſtomed to bite mankind, and which bit plaintiff, and very much injured him, *per quod*, &c.

Trinity Term, 30. Geo. III.

HAMPSHIRE, to wit. Be it remembered, that in Michaelmas Term laſt paſt, before our lord the king at Weſtminſter, came L. T. H. by John Barber his attorney, and brought into the court of our ſaid lord the king before the king himſelf, then and there his certain bill againſt Thomas Bemiſter being, &c. of a plea of treſpaſs on the caſe, and there are pledges for the proſecution, to wit, John Doe and Richard Roe, which ſaid bill follows in theſe words, to wit, Hampſhire, to wit: L. T. H. complains [to the end of the declaration]: And now at this day, that is to ſay, on Friday next after the morrow of the Holy Trinity in this ſame term, until which day the ſaid Thomas had leave to imparl to the ſaid bill, and then to anſwer the ſame, &c. before our ſaid lord the king at Weſtminſter, comes as well the ſaid L. T. by

Form of the iſſue, with not guilty pleaded in tort.

(a) Accuſtomed to bite mankind.

his ſaid attorney, as the ſaid Thomas by Robert Blake his attorney, and the ſaid T. defends the wrong and injury when, &c. and ſays, that he is not guilty of the premiſes above laid to his charge, in manner and form as the ſaid L. T. hath above thereof complained againſt him; and of this he puts himſelf upon the country, and the ſaid L. T. doth the like, &c.; therefore let a jury thereupon come before our lord the king at Weſtminſter, on next after, by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c. the ſame day is given to the ſaid parties aforeſaid to the ſame place.

Declaration againſt defendant for enticing away plaintiff's apprentice.

DEVONSHIRE, to wit. J. B. complains of J. K. being, &c.; for that whereas one other J. K. on the firſt of June 1788, at B. in the ſaid county of D. was, and from thenceforth hitherto hath been, and ſtill is the apprentice and ſervant of the ſaid plaintiff, and as ſuch apprentice and ſervant then and there, to wit, on, &c. lived and reſided with the ſaid plaintiff his maſter; yet the ſaid J. the now defendant, well knowing the premiſes aforeſaid, but contriving and fraudulently and maliciouſly intending wrongfully to injure and damnify the ſaid J. in this reſpect, and craftily and ſubtilly to deceive and defraud the ſaid James in the ſervice of his ſaid apprentice and ſervant, and of great part of the profits and advantages which he might and ought to have had by reaſon of the apprenticeſhip and ſervitude of the ſaid apprentice and ſervant, on, &c. at, &c. wrongfully, injurioufly, and unjuſtly, and without the licence and conſent, and againſt the will of the ſaid James, perſuaded, procured, and enticed the ſaid J. ſo then and ſtill being the apprentice and ſervant of the ſaid James, to abſent himſelf and depart from the ſervice of the ſaid James, to wit, at, &c.; on pretext and by means of which ſaid perſuaſion, procuration, and enticement, he the ſaid J. K. the apprentice and ſervant of the ſaid J. afterwards, to wit, on, &c. at, &c. without the licence, and againſt the will and conſent of the ſaid plaintiff, wrongfully and injurioufly departed and abſented himſelf from the ſaid ſervice of the ſaid J. and continued abſent and apart from his ſaid ſervice for a long time, to wit, from thence hitherto, whereby the ſaid J. hath, during all that time, wholly loſt the benefit, profit, and advantage, which by reaſon of the ſervice of his ſaid apprentice he might and ought to have had and received, and otherwiſe ſhould and would have received: And whereas afterwards, to wit, on, &c. at, &c. one other J. K. then, and from thence hitherto and ſtill being a certain other apprentice and ſervant of the ſaid plaintiff, unlawfully, and without the leave, and againſt the will of the ſaid plaintiff, departed and went away from the ſervice of the ſaid plaintiff, and then and there went and came to the ſaid defendant; yet the ſaid defendant, well knowing the ſaid J. laſt-mentioned apprentice, to be the ſervant and apprentice of the ſaid plaintiff as aforeſaid, then and there received the ſaid J. the ſaid laſt-mentioned apprentice, and wholly refuſed to deliver

2d Count, for receiving plaintiff's apprentice, who had abſented himſelf from plaintiff's ſervice.

ver him to the ſaid James his maſter, although ſo to do, to wit, on, &c. and oftentimes ſince, at, &c. was requeſted by the ſaid James, but he the ſaid defendant unlawfully detained and entertained, and kept the ſaid J. the ſaid laſt-mentioned apprentice ſo being the apprentice of the ſaid J. from his ſaid ſervice from the firſt of June 1788, for a long ſpace of time, to wit, from thence hitherto, whereby the ſaid J. wholly loſt the profit, benefit, and advantage which he, by reaſon of the ſervice of the ſaid J. K. the ſaid laſt-mentioned apprentice, during all that time ought and might have had and received, and otherwiſe ſhould and would have had and received, to wit, at, &c. Damages two hundred pounds. W. WALTON.

The general iſſue was pleaded. The apprentice, it ſeems, was nephew to defendant, and had been taken into his houſe without his having the leaſt notice of his being an apprentice, and had been retained in his ſervice till the action brought, when *he was* immediately diſcharged by him, and the indentures of apprenticeſhip were deſtroyed.

I think the defendant may give the whole of his caſe in evidence under the general iſſue not guilty, and if he can prove he did not know of his nephew's being an apprentice to the plaintiff, and that he had no notice from him, or any other perſon of it, it ſeems to me it will be a complete defence to the action. If the indentures of apprenticeſhip were not intended to be cancelled, but were accidentally loſt or deſtroyed, and this can be made appear to the court and jury, I think leſs proof than the production of them will be admiſſible, viz. parol proof of the contents. J. GRAHAM.

TORT.—EXCESSIVE DISTRESS.

Hilary Term, 29. Geo. III.

WARWICKSHIRE, to wit. John Crockett complains of Ralph Hubard being, &c.; for that whereas by the laws and cuſtoms of this realm no perſon whoſoever ought to be diſtrained by his or their goods and chattels for any matter, cauſe, or thing whatſoever, except by a reaſonable diſtreſs; yet the ſaid Ralph, well knowing the premiſes, but contriving and wrongfully intending to hurt, injure, haraſs, and aggrieve the ſaid John by an exceſſive and unreaſonable diſtreſs, againſt the laws and cuſtoms of this realm, heretofore, to wit, on, &c. at, &c. exceſſively and unreaſonably took and diſtrained, and cauſed and procured to be taken and diſtrained divers goods and chattels of the ſaid John, to wit, two boxes, &c. &c. of a large value, to wit, of the value of twenty pounds, there then found and being in certain apartments of the ſaid John, part and parcel of a certain dwelling-houſe of the ſaid Ralph, ſituate and being in, &c.; which ſaid apartments the ſaid John then, and for a long time before, held and occupied as tenant thereof to the ſaid Ralph, as and for, and in the name of a diſtreſs for certain rent amounting to a ſmall ſum of money, to wit, the ſum of eight ſhillings and ſixpence, ſuppoſed to be before then due and payable, and then in arrear from the ſaid John to the ſaid Ralph

Declaration againſt defendant, for making an unreaſonable diſtreſs on the plaintiff's goods.

for the aforeſaid rent of the aforeſaid apartments, and the ſaid Ralph wrongfully and unjuſtly kept and detained, and cauſed and procured to be kept and detained the ſaid goods and chattels ſo exceſſively diſtrained under ſuch diſtreſs as aforeſaid, for a long time, to wit, from thence hitherto, againſt the laws and cuſtoms of this realm, although at the time of the taking the aforeſaid diſtreſs he the ſaid Ralph well knew the ſaid diſtreſs to be exceſſive and unreaſonable, and that a much leſs number, to wit, one third part of the ſaid goods and chattels of the ſaid John would then and there have been a reaſonable and ſufficient diſtreſs for the ſaid arrears of rent, and would have been ſufficient to have ſatisfied the ſaid arrears of rent, and all the coſts and charges attending ſuch diſtreſs, and of an appraiſement and ſale of the ſaid goods and chattels, had the ſame been ſold, and although the ſaid goods and chattels, at the time of the taking of ſuch diſtreſs, were in ſuch different, ſeparate, and diſtinct quantities, and of ſuch various and diſtinct qualities, that the ſaid Ralph might then and there have diſtrained a reaſonable part thereof without diſtraining the whole thereof; by means of which ſaid ſeveral premiſes the ſaid John not only was and is greatly injured, haraſſed, and aggrieved, and hath ever ſince the taking of the ſaid diſtreſs wholly loſt and been deprived of the uſe of the ſaid goods and chattels, but hath been forced and obliged to lay out divers ſums of money, in the whole amounting to a large ſum of money, to wit, the ſum of twenty pounds, in providing and procuring others for the uſe of himſelf and his family in lieu thereof, to wit, at, &c.: And whereas alſo the ſaid Ralph heretofore, to wit, on, &c. had taken and diſtrained divers other goods and chattels of the ſaid John of a large value, to wit, of the value of twenty pounds, there then found and being as and for and in the name of a diſtreſs for certain other rent, to wit, the ſum of eight ſhillings and ſixpence, then due and in arrear from the ſaid John to the ſaid Ralph, for and in reſpect of certain other apartments of the ſaid Ralph before then held and occupied by the ſaid John as tenant thereof to the ſaid Ralph; and thereupon the ſaid John afterwards, and whilſt the ſaid Ralph was in poſſeſſion of the ſaid laſt-mentioned goods and chattels under ſuch diſtreſs thereof as aforeſaid, to wit, on, &c. offered and tendered to the ſaid Ralph, in ſatisfaction and diſcharge of the ſaid laſt-mentioned arrears of rent, and the coſts and charges of the ſaid laſt-mentioned diſtreſs, a certain large ſum of money, to wit, the ſum of one pound one ſhilling, the ſame being then and there a ſufficient ſum to ſatisfy and diſcharge the ſaid laſt-mentioned arrears of rent, together with all the coſts and charges of the ſaid laſt-mentioned diſtreſs; and although he the ſaid Ralph ought then and thereto have accepted and received the ſame from the ſaid John, in diſcharge of ſuch arrears of rent, and the coſts and charges of the ſaid diſtreſs, and to have forthwith given up and reſtored the ſaid goods and chattels ſo by him diſtrained and taken as aforeſaid to the ſaid John; yet the ſaid Ralph contriving, &c. to haraſs, oppreſs, and aggrieve the ſaid John in

2d Count ſtates that the plaintiff tendered a reaſonable ſum to defendant, who refuſed to accept it.

the

this behalf, did not, nor would then and there, or at any other time whatever, accept and receive from the ſaid John the ſaid ſum of money ſo by him tendered as aforeſaid, in ſatisfaction and diſcharge of the ſaid laſt-mentioned arrears of rent, and the coſts and charges of the ſaid laſt-mentioned diſtreſs, but then and there, and always afterwards, refuſed to accept the ſame from him the ſaid John, to wit, at, &c.; whereby and by means of which ſaid laſt-mentioned premiſes, the ſaid laſt-mentioned goods and chattels of him the ſaid John remained and continued, and have ever ſince the taking thereof been kept and detained in cuſtody as ſuch diſtreſs for the ſaid laſt-mentioned arrears of rent as aforeſaid, whereby the ſaid John hath loſt and been deprived of the uſe thereof, and hath been forced and obliged at a conſiderable inconvenience and expence, to provide himſelf with others in lieu thereof, to wit, at, &c. to the damage of the ſaid John of two hundred pounds, and therefore, &c. V. LAWES.

Michaelmas Term, 28. Geo. III.

Declaration againſt defendant, for ſelling and appraiſing ſtanding corn, after having diſtrained it for rent in arrear, contrary to 11 Geo. 2. c. 9.

GLOUCESTERSHIRE, to wit. W. H. complains of C. W. being, &c.; for that whereas the ſaid W. H. long before, and at the ſeveral times hereinafter mentioned, and at the time of the committing the grievance hereinafter mentioned, was lawfully poſſeſſed of a meſſuage, tenement, farms, and lands, with the appurtenances, ſituate and being in the pariſh of, &c. as tenant thereof to the ſaid C. W. under and by virtue of a certain demiſe thereof made by the ſaid C. W. to the ſaid W. H. at and under a certain yearly rent to be therefore paid by the ſaid W. H. to the ſaid C. W. for the ſame, to wit, at, &c. in, &c.: And whereas the ſaid C. W. on, &c. at, &c. in, &c. ſeized, took, and diſtrained as a diſtreſs for certain arrear of the aforeſaid rent then ſuppoſed and pretended to be due, in arrear, and payable from the ſaid W. H. to the ſaid C. W. under and by virtue of the aforeſaid demiſe (amongſt other things) to wit, one hundred acres of wheat, &c. &c. then growing and being in the ſaid demiſed premiſes, of great value, to wit, of the value of one thouſand pounds of lawful money of Great Britain, and there detained the ſame as ſuch diſtreſs as aforeſaid for the cauſe aforeſaid; yet the ſaid Charles, not regarding the *ſtatute* in that caſe made and provided, but contriving and maliciouſly intending wrongfully and unjuſtly to injure and damnify the ſaid W. H. and whilſt the ſaid wheat, &c. &c. were growing upon the aforeſaid premiſes, and before the ſaid wheat, &c. &c. or any of them, or any part thereof, were cut, made, gathered, cured, carried, and laid up, to wit, on, &c. at, &c. in, &c. did cauſe the ſame to be appraiſed, and afterwards, and whilſt the ſaid one hundred acres of wheat, &c. &c. were yet growing and ſtanding, to wit, on, &c. at, &c. in, &c. did cauſe the ſame to be ſold for and towards the ſatisfaction of the ſaid arrears of rent ſo ſuppoſed to be due from the ſaid W. H. to the ſaid C. W. and ſo diſtrained for as aforeſaid, contrary to the

(a) See Debt on Statutes, Vol. VIII. Actions on Statutes, Index.

form

form of the ſtatute in ſuch caſe made and provided; whereby and by reaſon and means of which ſaid premiſes, the ſaid wheat, &c. ſo appraiſed and ſold as aforeſaid, before the ſame was cut, ſent, gathered, cured, made, carried, and laid up, were ſold and diſpoſed of at a much leſs price or ſum than the ſame would have been ſold and diſpoſed of at if the ſame had been appraiſed and ſold after the cutting, gathering, curing, making, carrying, and laying up the ſame, and at a much leſs price than the ſame were worth, to wit, at five hundred pounds leſs, and by reaſon thereof he the ſaid W. H. hath been greatly injured, prejudiced, and damnified in the premiſes, to wit, at, &c.: And whereas alſo, &c. [ſame as the firſt Count as far as the gravamen, then proceed as follows]; yet the ſaid Charles, not regarding the ſtatute in that caſe made and provided, but contriving and maliciouſly intending wrongfully and unjuſtly to injure and damnify the ſaid W. C. afterwards, and whilſt the ſaid laſt-mentioned wheat, &c. were growing on the ſaid laſt-mentioned premiſes, to wit, on, &c. at, &c. did cauſe the ſame to be appraiſed, contrary to the form of the ſtatute in that caſe made and provided; whereby and by reaſon and means of which ſaid laſt-mentioned premiſes, the ſaid laſt mentioned wheat, &c. ſo appraiſed before the ſame were cut, &c. were afterwards ſold and diſpoſed of at ſuch appraiſement, and by reaſon thereof the ſame were appraiſed, ſold, and diſpoſed of at a much leſs price or ſum than the ſame would have been appraiſed, ſold, and diſpoſed of at after the gathering, curing, making, and laying up the ſame, to wit, at five hundred pounds leſs than the ſame would have been appraiſed at, ſold, and diſpoſed of for, and the ſaid William, by reaſon thereof, hath ſuſtained great injury, prejudice, and damage, to wit, at, &c.: And whereas alſo the ſaid William, on, &c. and for divers years then laſt paſt, held a certain other meſſuage, tenement, farm, and lands, ſituate, lying, and being in the pariſh of, &c. under and by virtue of a certain other demiſe thereof made by the ſaid Charles to the ſaid William for a term not yet expired, under the yearly rent of two hundred and ſixty-three pounds, payable by two equal half-yearly payments in the year, that is to ſay, on, &c.; of which rent there was then, to wit, on, &c. due and in arrear from the ſaid W. H. to the ſaid C. H. the ſum of ſix hundred and fifteen pounds and no more; yet the ſaid Charles, well knowing the premiſes laſt aforeſaid, but contriving and maliciouſly intending wrongfully and unjuſtly to injure and damnify the ſaid William, on, &c. at, &c. in, &c. took, ſeized, and diſtrained divers cattle, goods, and chattels, and divers large quantities of corn, &c. then being and growing in and upon the ſaid demiſed premiſes laſt-mentioned, as and for a diſtreſs for eight hundred and eighty-two pounds for rent of the ſaid laſt-mentioned demiſed premiſes, then and there pretended and claimed by the ſaid C. W. to be due and in arrear from the ſaid William, and the ſaid cattle, &c. &c. ſo diſtrained under the colour and pretence aforeſaid; he the ſaid C. W. afterwards, to wit, on, &c. ſold and diſpoſed thereof at and for a much larger ſum

2d Count, for taking an exceſſive diſtreſs, to wit, for taking goods of the value of 682l. when only 615l. was in arrear.

11 Geo. 2. c. 19. ſ. 8.

3d Count, demiſe rent payable by half-yearly inſtalments

ſum than the aforeſaid rent then actually due, and the money thereof ariſing and coming, converted and diſpoſed thereof to his own uſe in payment and ſatisfaction as well of the ſaid rent ſo pretended to be due and in arrear, whereas in truth and in fact no more rent than the aforeſaid ſum of five hundred and nineteen pounds was then due and in arrear from the ſaid W. H. to the ſaid C. W. at the time of the taking of the ſaid cattle, &c. in the manner laſt-mentioned; whereby the ſaid William ſays that he is injured, and hath ſuſtained damage to the value of two hundred pounds, &c. *Drawn by* MR. GRAHAM.

Declaration for diſtraining beaſts of the plough for rent, (although there were other property on the premiſes liable to diſtreſs), whereby plaintiff was prevented from tilling his land.

SURRY, to wit. Henry Wilſon complains againſt John Winter being, &c. at, &c. for that whereas by the laws and ſtatutes of this realm, no one ought to be diſtrained by beaſts of the plough for the debt of the king, or of any other perſon, or on any other occaſion by the officers or miniſters of , or of any other perſon ſo long as he ſhall have any other goods and chattels whereon a reaſonable or ſufficient diſtreſs may be had and levied for the ſame (except only ſuch beaſts of the plough which ſhall happen to be found doing damage to any one, which by the laws and cuſtoms of this realm ought to be diſtrained for the ſame); yet the ſaid John, well, &c. but diſregarding, &c. the ſtatute in ſuch caſe made and provided, on the fifteenth day of October, A. D. 1776, at the ſaid, &c. took and diſtrained divers beaſts of the plough, to wit, eleven oxen of the ſaid plaintiff, (the ſame beaſts not being found doing damage to any one, but then and there being in and upon a certain tenement, with the appurtenances of the ſaid plaintiff, at, &c. which ſaid tenement the ſaid plaintiff then held and enjoyed, and for one year and more next before and ending on the twenty-ninth day of September, &c. had held and enjoyed a tenement thereof to the defendant, by virtue of and under a demiſe thereof before then made to the plaintiff for a certain term of years which is not yet expired), for one hundred and ſeventy-two pounds of lawful, &c. and being one year's rent of the ſaid tenement on the ſaid, &c. aforeſaid, and alſo at the ſaid time of taking the diſtreſs above-mentioned, ſuppoſed to be due and in arrear from the plaintiff to the defendant, although at the time of the taking of the ſaid diſtreſs there were on the aforeſaid premiſes divers other goods and chattels of the plaintiff, beſides beaſts of the plough, to wit, one hundred quarters of wheat, &c. of the plaintiff, of the value of three hundred pounds of like lawful, &c. whereof a reaſonable diſtreſs might have been made and levied in the room and ſtead of the ſaid beaſts of the plough, ſufficient to ſatisfy and pay the ſaid rent ſo due and in arrear as aforeſaid; and the ſaid defendants then and there ſold the ſaid beaſts of the plough of the plaintiff, and converted and diſpoſed of the money ariſing by ſuch ſale thereof to his own uſe againſt the laws and cuſtoms of this realm, and againſt the peace of our lord the now king, by means whereof the plaintiff hath been

been greatly hindered and incommoded in the neceſſary manuring and cultivation of the ſaid tenement, to wit, at the pariſh aforeſaid, in the county aforeſaid: And whereas, &c. the defendant, on, &c. aforeſaid, at, &c. took and diſtrained other the beaſts of the plough, to wit, ten other oxen, and alſo of the beaſts of the plaintiff, to wit, eleven milch cows, eight hogs, and eleven pigs, whereby the ſaid plaintiff tilled his land, then being in and upon a certain other tenement of the ſaid plaintiff, ſituate, &c. as aforeſaid, not for damage feaſant, but for certain rent then ſuppoſed to be due, owing, in arrear, and unpaid from the plaintiff to the defendant, for and in reſpect of the ſaid laſt-mentioned tenement, although there were then and there goods and chattels of the plaintiff other than the live cattle laſt above-mentioned in and upon the ſaid laſt-mentioned tenement, ſufficient for a reaſonable diſtreſs for the rent laſt aforeſaid; and afterwards, to wit, on the ſaid, &c. at, &c. aforeſaid, ſold the ſaid laſt-mentioned beaſts of the plough and other beaſts, whereby the ſaid plaintiff tilled his land, and the money ariſing from the ſale thereof converted, &c. to the uſe of him the ſaid defendant, contrary to the form of the ſtatute in that caſe made and provided, and againſt the peace of our lord the now king: And whereas the plaintiff for one year and more next before and ending on the ſaid, &c. aforeſaid, had held and enjoyed, and from thence continually until and at the time of the making of the diſtreſs hereinafter next mentioned, alſo held and enjoyed a certain other tenement, with the appurtenances, ſituate and being at, &c. aforeſaid, as tenant thereof to the defendant, by virtue of and under a certain other demiſe thereof before then made to the ſaid plaintiff for a certain other term of years which is not yet expired, under the yearly rent of one hundred and ſeventy-two pounds of, &c. of which laſt-mentioned rent there was, on the ſaid, &c. aforeſaid, and alſo at the time of the making of the diſtreſs hereinafter next mentioned, due and in arrear from the ſaid plaintiff to the ſaid defendant the ſum of one hundred and ſeventy-two pounds and no more, being of the ſaid laſt-mentioned tenement which accrued and became payable on the ſaid, &c. aforeſaid; yet the ſaid defendant, well knowing, &c. but contriving, &c. to injure the ſaid plaintiff, and not regarding the ſtatute in that caſe made and provided on the ſaid, &c. aforeſaid, took and diſtrained for the ſaid laſt-mentioned arrears of rent, divers, &c. of the ſaid plaintiff, found and being in and upon the laſt-mentioned tenement, with the appurtenances, of much greater value than the ſaid laſt-mentioned arrears of rent, to wit, of the value of three hundred pounds and upwards, and thereby took a great and unreaſonable diſtreſs for the ſaid laſt-mentioned arrears of rent, and ſold the ſaid laſt-mentioned cattle, &c. and the money ariſing from ſuch ſale, converted and diſpoſed of to his own uſe, contrary to the form of the ſtatute in that caſe made and provided, and againſt the peace of our lord, &c. Damages three hundred pounds and awards.

EDW. LAW.

2d Count, for an unreaſonable diſtreſs.

3d Count, another demiſe.

The

Plea first, not guilty to the whole declaration; secondly, (by leave of the court) at the taking, &c. of the beasts in two first Counts, and after averring that the taking, &c. and also the beasts mentioned in those Counts are the same, that on the said, &c. aforesaid, the plaintiff gave leave and licence to the defendant to take, &c. the said beasts for one hundred and seventy-two pounds of lawful, &c. being for one year's rent as and for a distress for rent, and to sell the said beasts of the plaintiff for the purpose of raising money for and towards the satisfaction and discharge of the said rent so being in arrear and unpaid to the defendant; and this, &c.

Plea to the first Count, a licence from the plaintiff, and issue.

Replication, that the plaintiff did not give such leave or licence, and issue.

TORT.—AGAINST SHERIFFS.

MIDDLESEX, to wit. J. S. complains of sir J. S. and B. W. late sheriff of the said county of Middlesex, he the said sir J. S. being in the custody of the marshal of the marshalsea of our sovereign lord the now king, before the king himself, and he the said B. W. having privilege of parliament; for that whereas one J. H. on, &c. and for the space of half a year then last past, held, used, occupied, and enjoyed two certain messuages or dwelling houses, with the appurtenances, situate, lying, and being in Wellclose Square, in the parish of, &c. as tenant thereof to the said plaintiff at and under a certain rent or sum of money payable therefore by the said J. H. to the said plaintiff for the same, to wit, at, &c.: And whereas on, &c. at, &c. in, &c. fourteen pounds of the rent aforesaid due and payable by the said J. H. to the said plaintiff for the said messuages or dwelling-houses for one half year ended at and upon that day and in that year, became and were due, in arrear, and payable, and continually from thenceforth hitherto have been, and still are in arrear and payable: And whereas the said fourteen pounds of the said rent for the said messuages or dwelling-houses so being in arrear and unpaid by the said J. H. to the said plaintiff as aforesaid, they the said defendants so being sheriff of the county aforesaid, afterwards, to wit, on, &c. at, &c. in, &c. they the said defendants then being sheriffs of the said county of Middlesex, by virtue of and under pretext of a certain writ of our said lord the king of *fieri facias* against the said J. H. at the suit of one H. W. and M. W. out of the court of our said lord the king, before the king himself then and still here, to wit, at, &c. in, &c. before that time sued forth and prosecuted upon a certain judgment against the said J. H. at the suit of the said H. W. and M. W. in the said court here, before that time had, obtained, and directed to the then sheriff of the county of Middlesex,

Declaration against the late sheriff of Middlesex, for taking goods off the premises, which they had seized under a *fieri facias*, without first paying plaintiff half a year's rent which was in arrear.

ſex, took the goods and chattels of the ſaid J. H. then being in the ſaid two meſſuages or dwelling-houſes, with the appurtenances, ſo in the tenure and occupation of the ſaid J. H. as aforeſaid, to a large amount beyond the amount of the ſaid arrears of rent ſo due and owing from the ſaid J. H. to him the ſaid plaintiff, that is to ſay, to the amount or ſum of forty-eight pounds of lawful money of Great Britain: And the ſaid plaintiff further ſays, that after the taking of the ſaid goods and chattels ſo being in the ſaid meſſuages or dwelling-houſes, with the appurtenances as aforeſaid, and before the removal of the ſame under pretext of the ſaid writ, that is to ſay, on, &c. at, &c. in, &c. he the ſaid plaintiff gave notice to the ſaid defendants, ſo being ſheriff as aforeſaid, of the aforeſaid rent ſo being due and in arrear to the ſaid plaintiff from the ſaid J. H. as aforeſaid, and then and there requeſted of the ſaid defendants, then being ſheriff as aforeſaid, that he the ſaid plaintiff might be paid his ſaid rent ſo due, in arrear, and unpaid to the ſaid plaintiff as aforeſaid, before the ſaid goods and chattels, or any part thereof, ſhould be removed from out of the ſaid two meſſuages or dwelling-houſes, with the appurtenances; yet the ſaid defendants, then being ſheriff of the ſaid county of Middleſex, well knowing the premiſes, but not regarding the duty of his ſaid office, nor the ſtatute in ſuch caſe made and provided, but contriving and wrongfully and deceitfully intending to deceive and defraud the ſaid plaintiff in this reſpect of the ſaid arrears of the ſaid rent ſo due to him as aforeſaid, and of his the ſaid plaintiff's remedy for the recovery thereof, under colour and pretext of the ſaid writ, on, &c. wrongfully, injuriouſly, and deceitfully removed and carried away the ſaid goods and chattels ſo taken as aforeſaid from and out of the ſaid meſſuages or dwelling-houſes, with the appurtenances, contrary to the form of the ſtatute in that caſe made and provided, without paying or ſatisfying the ſaid plaintiff the ſaid arrears of the ſaid rent ſo due and owing, and in arrear to him as aforeſaid, or any part thereof: And the ſaid plaintiff ſaith, that he hath not at any time ſince been paid or ſatisfied the ſaid arrears of the ſaid rent, or any part thereof, but the ſame, and every part thereof, is due, in arrear, and unpaid from the ſaid J. H. to the ſaid plaintiff, whereby he the ſaid plaintiff hath been and is deprived of the benefit of diſtreſs for the recovery and ſatisfaction of the ſaid arrears of the ſaid rent, and is in great danger of loſing the ſame, to wit, at, &c.: And whereas, &c. [Same as firſt, except ſtating J. H. to be poſſeſſed of one meſſuage only]: And whereas, &c. [Same as 2d Count, only ſtating one quarter's rent only to be in arrear. Damages, &c.

A. PALMER.

In this action you need not ſtate all the particulars of the demiſe, but if you do, and they are not proved as ſtated, there ſhall be a nonſuit, Briſtow v. Wright, Doug. 665.

KENT,

KENT, to wit. R. C. complains of J. H. esquire, late sheriff of the county of Kent, being, &c.; for that whereas the said R. C. heretofore, to wit, in the term of St. Hilary, in the twenty-sixth year of the reign of our sovereign lord the now king, in the court of our said lord the now king of the bench at Westminster, in the county of Middlesex, before the justices there, by the consideration and judgment of the same court recovered against one G. C. late of, &c. as well a certain debt of eighty pounds as sixty-three shillings, which were adjudged by the same court to the said R. C. for his damages which he had sustained by reason of the detaining of that debt, whereof the said G. C. was convicted, as by the record and proceedings thereof in the same court of the bench at Westminster aforesaid, more fully appears; which said debt and damages so as aforesaid recovered, being wholly unpaid and unsatisfied to the said R. C. he the said R. C. for the obtaining the said debt and damages, afterwards, to wit, on, &c. in the twenty-sixth year of the reign of our said sovereign lord the now king, sued out of the said court of our said lord the king of the bench here at Westminster aforesaid, a certain writ of our said lord the king of *fieri facias*, directed to the then sheriff of Kent, by which said writ the said lord the king commanded the said sheriff that he should cause to be levied of the goods and chattels in his bailiwick of the said G. C. the debt and damages aforesaid, and that the said sheriff should have the money before his said majesty's justices at Westminster in fifteen days of Easter, to render to the said plaintiff for the debt and damages aforesaid, and that the said sheriff should have there then that writ; which said writ afterwards, and before the return of the same writ, to wit, on, &c. in the twenty-sixth year aforesaid, at, &c. in, &c. was delivered to the said defendant, the said defendant then and there, and continually from thenceforth until and at the return of the said writ, being sheriff of Kent aforesaid, to be executed in due form of law ‡: And the said plaintiff avers, that the said G. C. at the time of the delivery of the said writ of *fieri facias* to the said defendant as aforesaid, and afterwards, and before the return of the said writ, had divers goods and chattels within the bailiwick of the said sheriff, sufficient to have satisfied the said plaintiff his debt and damages aforesaid, to wit, at, &c. in, &c.; and the said defendant, so being sheriff as aforesaid, not regarding his duty in this behalf, but contriving and fraudulently intending to deceive the said plaintiff, and to defraud him of his said debt and damages, did not make and levy the debt and damages aforesaid, or any part thereof, and pay to or to the use of the said plaintiff the same debt and damages, or any part thereof, but on the contrary thereof did, amongst other things, falsely, fraudulently, and deceitfully return upon the said writ to the justices here, that he the said defendant had caused to be levied of the goods and chattels of the said G. C. twenty-six pounds; five pounds, part whereof, he the said defendant had retained for the poundage and necessary expences attending the levy and sale of the said goods and chattels, and twenty-one pounds, residue of

Declaration against the late sheriff of Kent for falsely returning to a *fieri facias*, that he had levied part of debt, part of which he had retained for poundage, and had paid residue to the plaintiff, which he has not done.

of the ſaid ſum above levied, he the ſaid defendant had paid to and to the uſe of the ſaid plaintiff, in ſatisfaction of ſo much of his debt and damages aforeſaid; whereas in truth and in fact the ſaid defendant did not levy or pay the ſaid ſum of twenty pounds, reſidue thereof, or any part thereof to or to the uſe of the ſaid plaintiff, or to any other perſon by his the ſaid plaintiff's authority, or upon his behalf, but hath wholly failed and refuſed ſo to do, and by reaſon of the premiſes he the ſaid plaintiff hath loſt and been deprived of his remedy for obtaining the payment of the ſaid ſum of twenty-one pounds, and every part thereof, and hath wholly loſt the ſame: And whereas, &c. [Same as in firſt Count to this mark ‡, and then go on as follows]: And the ſaid plaintiff ſays, that afterwards, and before the return of the ſaid laſt-mentioned writ, the ſaid defendant ſo being ſheriff as aforeſaid, did by virtue of the ſame writ cauſe to be levied of the goods and chattels of the ſaid G. C. in his bailiwick twenty-ſix pounds; and the ſaid defendant, ſo being ſheriff as aforeſaid, not regarding the duty of his ſaid office of ſheriff in that behalf, but contriving and intending to deceive and defraud the ſaid Robert in that behalf, afterwards, to wit, at the return of the ſaid writ, amongſt other things, falſely, fraudulently, and deceitfully returned upon the ſaid laſt-mentioned writ to the ſaid juſtices here, that he the ſaid defendant had cauſed to be levied of the goods and chattels of the ſaid G. C. twenty-ſix pounds, five pounds, part whereof, he the ſaid defendant had retained for the poundage and the neceſſary expences attending the levy and ſale of the ſaid laſt-mentioned goods and chattels, twenty-one pounds, reſidue of the ſaid ſum above levied, he the ſaid defendant had paid to and to the uſe of the ſaid plaintiff, in ſatisfaction of ſo much of the ſaid debt and damages laſt aforeſaid, whereas in truth and in fact the ſaid defendant did not pay the ſaid ſum of twenty-one pounds, reſidue thereof, or any part thereof, to or for the uſe of the ſaid plaintiff, but has wholly failed and refuſed ſo to do, and ſtill refuſes ſo to do, and by reaſon of the premiſes he the ſaid plaintiff hath loſt and been deprived of his remedy for the payment of the ſaid laſt-mentioned ſum, or any part thereof, and has wholly loſt the ſame, to wit, at, &c. Damage, &c.

2nd Count.

A. PALMER.

Declaration againſt ſheriff of London, for a falſe return.

MIDDLESEX, to wit. R. B. complains of B. W. and J. S. eſquires being, &c.; for that whereas the ſaid R. heretofore, to wit, in (1) Eaſter term, in the twenty-ſixth year of the reign of our lord the now king, in the court of our ſaid lord the king, before the king himſelf here, to wit, at, &c. by the conſideration and judgment of the ſaid court recovered againſt *one* (2) Joſeph Wolfe as well a certain (3) debt of three hundred pounds as alſo eighty-three ſhillings, WHICH IN AND BY THE SAID COURT WERE ADJUDGED TO THE SAID R. for his damages which he had ſuſtained by reaſon of the detaining the ſaid (4) debt, whereof the ſaid Joſeph was convicted, as by the record and proceedings

(1) "Eaſter"

(2) "the ſaid"

(3) "other"

(4) "laſt-mentioned"

ceedings thereof remaining in the ſaid court here, to wit, at W. &c. fully appears; which ſaid (5) judgment remains in its full force, not reverſed, annulled, ſet aſide, or ſatisfied: And the ſaid Robert further ſaith, that the ſaid (6) debt and damages, or any part thereof, not being paid or ſatisfied (7), and the ſaid (8) judgment being in full force, he the ſaid R. heretofore, to wit, on, &c. ſued out of the ſaid court here a certain (9) writ of our ſaid lord the king called a *teſtatum fieri facias* upon the ſaid (10) judgment, directed to the ſheriffs of London, by which ſaid (11) writ our ſaid lord the king commanded the ſaid ſheriffs that they ſhould cauſe to be levied of the goods and chattels in their bailiwick of the ſaid Joſeph Wolfe as well the ſaid debt of three hundred pounds, which the ſaid Robert ſo recovered againſt him as (12) aforeſaid, as alſo the ſaid eighty-three ſhillings which in the court of our ſaid lord the king, before the king himſelf here, were ſo as aforeſaid awarded to the ſaid Robert for his damages which he ſuſtained by reaſon of the detaining of the ſaid (13) debt, and that they the ſaid ſheriffs ſhould have that money before our ſaid lord the king at Weſtminſter, on Monday next after the morrow of the Aſcenſion of Our Lord then next, and now laſt paſt, to render to the ſaid Robert for the debt and damages (14) aforeſaid, whereof the ſaid Joſeph was convicted, and for that our ſaid lord the king's ſheriff of Middleſex, at a certain day then paſt, had returned to our ſaid lord the king that the ſaid Joſeph had not any goods and chattels in his bailiwick, whereof he the ſaid ſheriff could cauſe to be made the debt and damages (15) aforeſaid, whereas it had been ſufficiently atteſted in the ſaid court of our ſaid lord the king before the king himſelf, that the ſaid Joſeph had ſufficient goods and chattels in the ſaid ſheriffs of London's cuſtody to ſatisfy the ſame, and that the ſaid ſheriffs have there that writ. which ſaid (16), writ, WITH A CERTAIN INDENTURE THEREON MADE, DIRECTING THE SAID SHERIFFS TO LEVY ONE HUNDRED AND EIGHTY-FOUR POUNDS, PARCEL OF THE SAID DEBT AND DAMAGES THEREIN MENTIONED, SO RECOVERED BY THE SAID R. AS (17) AFORESAID, BESIDES SHERIFF'S POUNDAGE, OFFICER'S FEES, AND ALL OTHER INCIDENTAL CHARGES, afterwards and before the return thereof, to wit, on, &c. was delivered to the ſaid B. W. and J. S. who then and there, and from thence until and at and after the return thereof as hereinafter mentioned, were ſheriffs of London to be executed in due form of law§ (18); *by virtue of which ſaid writ the ſaid B. W. and J. S. ſo being ſheriffs of London afterwards, and before the return of the ſaid writ, to wit, on, &c. and within the ſaid ſheriff's bailiwick, took into their hands and poſſeſſion* divers goods and chattels of the ſaid Joſeph of a large value, to wit, to the value of the ſaid money ſo by the ſaid indenture on the *aforeſaid* (19) writ, directed to be levied as aforeſaid (20), *and parcel of the aforeſaid debt and damages, and thereof levied ſuch money, to wit,* at, &c.; yet the ſaid B. W. and J. S. ſo being ſheriffs of L. aforeſaid, not regarding the duty of their office as ſuch ſheriffs, but contriving and

(5) "laſt-mentioned"
(6) "laſt-mentioned"
(7) "to the ſaid Robert,"
(8) "laſt-mentioned"
(9) "other"
(10) "laſt-mentioned"
(11) "laſt-mentioned"
(12) "laſt"
(13) "laſt-mentioned"
(14) "laſt"
(15) "laſt"
(16) "laſt-mentioned"
(17) "laſt"
(18) "and the ſaid Robert avers, that the ſaid B. W. and J. S. ſo being"
(19) "ſheriffs of London afore-ſaid afterwards and before the return of the ſaid laſt-mentioned writ, to wit, on, &c. within their bailiwick, ſeized and took"
(20) "laſt-mentioned"

and fraudulently intending wrongfully and unjuſtly to hurt, injure, and prejudice the ſaid Robert in this behalf, and to deprive him of great part of his ſaid (21) debt and damages, and of the means of recovering of the ſame, they the ſaid B. W. and J. S. ſo being ſuch ſheriffs as aforeſaid (22)‡, had not, nor had either of them the ſaid money ſo by them levied as aforeſaid, or any part thereof before our ſaid lord the king at Weſtminſter at the return of the ſaid writ, to render to the ſaid Robert according to the exigence of the ſaid writ, nor have the ſaid B. W. and J. S. ſo being ſheriffs as aforeſaid, paid the ſaid money ſo by them levied as aforeſaid, or any part thereof, to the ſaid R. but therein wholly failed and made default, to wit, at, &c. and at the return of the ſaid writ the ſaid B. W. and J. S. as ſuch ſheriffs as aforeſaid, falſely, maliciouſly, and deceitfully returned to our ſaid lord the king at Weſtminſter aforeſaid, on the ſaid writ, that the ſaid Joſeph Wolfe, in the ſaid writ named, had not any goods and chattels in their ſaid bailiwick, whereby the ſaid ſum ſo indorſed to be levied on the back of the ſaid writ as aforeſaid, or any part thereof they could cauſe to be made, as by the ſaid writ ſo indorſed as aforeſaid, and the return thereof remaining of record in the ſaid court of our ſaid lord the king, before the king himſelf, to wit, at Weſtminſter aforeſaid, in, &c. fully appears; by means of which ſaid premiſes the ſaid R. is greatly injured, and hath been deprived of the means of obtaining the ſaid part of his ſaid debt and damages ſo by the indorſement on the ſaid writ to be levied as aforeſaid, and is likely to wholly loſe the ſame. [A 2d Count ſame as firſt, omitting what is in Italic, and inſerting what is in the margin, till you come to this mark ‡, when go on as follows]; while the ſaid laſt-mentioned goods and chattels ſo remained in their cuſtody under the ſaid ſeizure thereof, and before the return of the ſaid laſt-mentioned writ, to wit, on, &c. ſo negligently, careleſsly, and incautiouſly behaved, conducted, and demeaned themſelves in the execution of their ſaid office of ſheriffs as aforeſaid, that they then and there ſuffered and permitted the ſaid laſt-mentioned goods and chattels to be purloined, reſcued, and taken away out of their cuſtody and poſſeſſion, by ſome perſon or perſons to the ſaid Robert unknown, and the ſame were thereby wholly loſt; and at the return of the ſaid writ, the ſaid B. W. and J. S. as ſuch ſheriffs as aforeſaid, falſely, maliciouſly, and deceitfully returned to our ſaid lord the king at Weſtminſter aforeſaid, on the ſaid laſt-mentioned writ, that the ſaid Joſeph Wolfe, in the ſaid writ named, had not any goods or chattels in their ſaid bailiwick whereby the ſaid ſum ſo indorſed to be levied on the back of the ſaid laſt-mentioned writ as aforeſaid, or any part thereof they could cauſe to be made as by the ſaid laſt-mentioned writ ſo indorſed as aforeſaid, and the return thereof remaining of record in the ſaid court here, to wit, at Weſtminſter aforeſaid, more fully appears; by means of which, &c. [as in firſt Count.] [A third Count ſame as ſecond, omitting what is in ſmall capitals till you come to this mark §, when proceed as follows]:

And

(21) "under colour and pretence of levying ſuch money and might the ſet have levied he ſame as I ey ought to have done"

(22) "laſt-mentioned"

And the ſaid Robert avers, that the ſaid Joſeph Wolfe, at the time of the delivery of the ſaid laſt-mentioned writ to the ſaid B. W. and J. S. ſo being ſheriffs of London as aforeſaid, to be executed as aforeſaid, and from thence for a long time, to wit, until the return of the ſaid laſt-mentioned writ, had divers goods and chattels in the bailiwick of the ſaid then ſheriffs to a large value, to wit, to the value of the ſaid money ſo by the ſaid indorſement on the ſaid laſt-mentioned writ as aforeſaid directed to be levied as aforeſaid, and that the ſaid B. W. and J. S. ſo being ſheriffs of London, might and ought to have made and levied ſuch money of and upon the ſaid laſt-mentioned goods and chattels, whereof the ſaid B. W. and J. S. then and there had due notice; yet the ſaid B. W. and J. S. ſo being ſuch ſheriffs of L. not regarding the duty, &c. but contriving, &c. the ſaid R. in this behalf, and to deprive him of a great part of his ſaid laſt-mentioned debt and damages, and of the means of recovering the ſame, the ſaid B. W. and J. S. ſo being ſuch ſheriffs as aforeſaid, did not make or levy, or cauſe to be made or levied of thoſe goods and chattels in his bailiwick the ſaid money ſo by the ſaid indorſement on the ſaid laſt-mentioned writ directed to be levied as aforeſaid, and parcel of the ſaid laſt-mentioned debt and damages, but therein wholly failed and made default, to wit, at, &c. and at the return of the ſaid laſt-mentioned writ they the ſaid B. W. and J S. falſely, maliciouſly, and deceitfully returned to our ſaid lord the king at Weſtminſter aforeſaid on the ſaid laſt-mentioned, writ that the ſaid Joſeph Wolfe in the ſaid laſt-mentioned writ named had not any goods and chattels in their ſaid bailiwick, &c. [as in firſt Count]; to the damage of the ſaid R. of five hundred pounds; and therefore he brings his ſuit.

V. LAWES.

MIDDLESEX, to wit. Be it remembered, that on Monday next after the morrow of All Souls, in this ſame term, before our lord the king at Weſtminſter, comes James Tyte, by James Lowe his attorney, and brings into the court of our ſaid lord the king, before the king himſelf now here, his certain bill againſt ſir Richard Glode, knight, and John Liptrap, eſquire, being in the cuſtody of the marſhal of the Marſhalſea of our lord the now king, before the king himſelf, of a plea of treſpaſs on the caſe, and there are pledges for the proſecution, to wit, John Doe and Richard Roe; which ſaid bill follows in theſe words, to wit, Middleſex, to wit: James Tyte complains of ſir Richard Glode, knight, and John Liptrap, eſquire, being in the cuſtody of the marſhal of the Marſhalſea of our lord the now king, before the king himſelf; for that whereas by a certain act of parliament made at the parliament of lady Elizabeth, late queen of England, &c. at a ſeſſion thereof holden at Weſtminſter, in the county of Middleſex, begun on the twenty-ninth day of October, in the twenty-eighth year of her reign, entitled, "An act to prevent extortion

Action of tort againſt the ſheriff by the party grieved for levying more than the ſum in the writ of execution without paying the overplus.

Extortion in Sheriffs, Under Sheriffs, and Bailiffs of Franchiſes or Liberties in Caſe of Execution," it was amongſt other things enacted, that it ſhould not be lawful, from the firſt day of May then next enſuing, to or for any ſheriff, under ſheriff, bailiff of franchiſes or liberties, nor for any of their, or either of their officers, miniſters, ſervants, bailiffs, or deputies, nor for any of them, by reaſon and colour of their office or offices, to have, receive, or take of any perſon or perſons whatſoever, directly or indirectly, for the ſerving and executing of any extent or execution upon the body, lands, goods, or chattels of any perſon or perſons whatſoever more or other conſideration or recompence than in the ſaid act was and ſhould be limited and appointed, which ſhall be lawful to be had, received, and taken, that is to ſay, twelvepence of or for every twenty ſhillings where the ſum exceed not one hundred pounds, and ſixpence of and for every twenty ſhillings being over and above the ſaid ſum of one hundred pounds that he or they ſhould ſo levy or extend and deliver in execution or take the body in execution for by virtue and force of any extent or execution whatſoever, upon pain and penalty that all and every ſheriff, under ſheriff, bailiff of franchiſes and liberties, their and every of their miniſters, ſervants, officers, bailiffs, or deputies, which at any time after the ſaid firſt day of May then next enſuing ſhould directly or indirectly do the contrary, ſhould loſe and forfeit to the party grieved his treble damages, and ſhould forfeit the ſum of forty pounds of good and lawful Engliſh money, for any time that he, they, or any of them ſhould do the contrary, the one moiety thereof to be to the ſaid ſovereign lady the queen, her heirs, and ſucceſſors, and the other moiety thereof to the party or parties that would ſue for the ſame by any plaint, action, ſuit, bill, or information, wherein no eſſoign, wager of law, or protection ſhould be [illegible], as [illegible] action being thereunto had, will more fully appear: And the ſaid James further ſays, that after the making of the ſaid act, and after the firſt of May therein mentioned, to wit, on the twelfth day of June, in the thirty-ſixth year of the reign of our lord the now king, there iſſued out of the court of our ſaid lord the king of the bench at Weſtminſter, in the county of Middleſex aforeſaid, a certain writ of our ſaid lord the King, called a *fieri facias*, directed to the ſheriff of Middleſex, by which ſaid writ our ſaid lord the king commanded the ſaid ſheriff that he ſhould cauſe to be levied on the good and chattels in his bailiwick of one George Birch and the ſaid James Tyte as well a certain debt of one thouſand two hundred pounds, which William Dixon had recovered againſt them in the ſaid court of our ſaid lord the king before his juſtices at Weſtminſter, as alſo five pounds, which in the ſame court were awarded to the ſaid William Dixon for his damages which he ſuſtained by reaſon of the detaining the ſaid debt, and that the ſaid ſheriff ſhould have that money before his ſaid majeſty's juſtices at Weſtminſter on the morrow of All Souls to render to the ſaid William Dixon for the debt and damages aforeſaid whereof the ſaid George and James

were

were convicted, and that the ſaid ſheriff ſhould have then and there that writ, on which ſaid writ there was written a certain indorſement as follows, to wit, "Levy twenty-eight pounds one ſhilling and eightpence, beſides ſheriff's poundage, officers fees, and coſts of levy," and which ſaid writ, with the ſaid indorſement thereon, afterwards, and before the ſaid return thereof, to wit, on the twenty-fourth day of June, in the year of Our Lord 1796, at Weſtminſter, in the ſaid county of Middleſex, was delivered to the ſaid ſir Richard and John, who then, and from thence until and at the time of committing the grievance hereinafter next mentioned, were ſheriffs of the ſaid county of Middleſex, to be executed in due form of law; by virtue of which ſaid writ, the ſaid ſir Richard and John, ſo being ſheriffs of the ſaid county of M. as aforeſaid, afterwards, and before the ſaid return of the ſaid writ, to wit, on the day and year laſt aforeſaid, at W. aforeſaid, in the county aforeſaid, and with their bailiwick, as ſuch ſheriff, ſeized and took in execution divers goods and chattels of the ſaid James there then found and being, of a large value, and then and there levied the ſaid ſum of money ſo indorſed on the ſaid writ as aforeſaid; nevertheleſs the ſaid ſir Richard and John, ſo being ſheriffs of the ſaid county of Middleſex as aforeſaid, not regarding their duty as ſuch ſheriffs as aforeſaid, nor the ſtatute in ſuch caſe made and provided, afterwards, to wit, on the ſame day and year laſt aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, wrongfully, illegally, and oppreſſively had received and took of and from the ſaid James for the ſuing and executing of the ſaid execution more and other conſideration and recompence than in the ſaid act is limited and appointed in that behalf, that is to ſay, divers ſums of money, in the whole amounting to the ſum of fifteen ſhillings and ſixpence, more than in the ſaid act is ſo limited and appointed; whereby the ſaid James is damaged and aggrieved to the amount of the ſaid ſum of fifteen ſhillings and ſixpence contrary to the form of the ſtatute in ſuch caſe made and provided, to wit, at Weſtminſter aforeſaid, in the county aforeſaid: And the ſaid James further ſays, that after the making of the ſaid act of parliament, and after the firſt day of May therein mentioned, to wit, on the ſaid twelfth day of June, in the thirty-ſixth year aforeſaid, there iſſued out of the ſaid court of our ſaid lord the king of the bench at Weſtminſter aforeſaid, in the county aforeſaid, a certain other writ of our ſaid lord the king, called a *fieri facias*, directed to the ſaid ſheriffs of Middleſex, by which ſaid writ our ſaid lord the king commanded the ſaid ſheriff that he ſhould cauſe to be levied of the goods and chattels in his bailiwick of one George Birch and the ſaid James Tyte as well a certain debt of one thouſand two hundred pounds, which William Dixon had recovered againſt them in the ſaid court of our lord the king before the juſtices at Weſtminſter, as alſo five pounds, which in the ſame court were awarded to the ſaid William Dixon for his damages which he ſuſtained by reaſon of the detaining the ſaid laſt-mentioned debt, and that the ſaid ſheriff ſhould have that money before his ſaid majeſty's

2d Count.

juſtices at Weſtminſter on the morrow of All Souls, to render to the ſaid William Dixon for the debt and damages laſt aforeſaid, whereof the ſaid George and James were convicted, and that the ſaid ſheriff ſhould have there then that writ, on which ſaid laſt-mentioned writ there was written a certain indorſement as follows, to wit, "Levy twenty-eight pounds one ſhilling and eightpence, beſides ſheriffs poundage, officers fees, and coſts of levy;" and which ſaid laſt-mentioned writ, with the ſaid indorſement thereon, afterwards, and before the ſaid return thereof, to wit, on the ſaid twenty-fourth day of June, in the ſaid year of Our Lord 1796, at Weſtminſter aforeſaid, in the county aforeſaid, was directed to the ſaid ſir Richard and John, who then, and from thence until and at the time of committing the grievance hereinafter mentioned, were ſheriffs of the ſaid county of Middleſex, to be executed in due form of law; by virtue of which ſaid laſt-mentioned writ the ſaid ſir Richard and John, ſo being ſheriffs of the ſaid county of Middleſex as aforeſaid, afterwards, and before the ſaid return of the ſame writ, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, and within their bailiwick, as ſuch ſheriff ſeized and took in his execution divers goods and chattels of the ſaid James there then found and being, of a large value, and then and there levied the ſaid ſum of money ſo indorſed on the ſaid laſt-mentioned writ as aforeſaid; nevertheleſs the ſaid ſir Richard and John, ſo being ſheriffs of the ſaid county of Middleſex as aforeſaid, not regarding their duty as ſuch ſheriffs as aforeſaid, nor the ſtatute in ſuch caſe made and provided, afterwards, to wit, on the day and year laſt aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, wrongfully, illegally, and oppreſſively had received and took of and from the ſaid James for the ſerving and executing of the ſaid execution more and other conſideration and recompence than in the ſaid act is limited and appointed in that behalf, that is to ſay, the ſum of five ſhillings, more than in the ſaid act is ſo limited and appointed; whereby the ſaid James is damaged and aggrieved to the amount of the ſaid laſt-mentioned ſum of five ſhillings contrary to the form of the ſtatute in ſuch caſe made and provided, to wit, at Weſtminſter aforeſaid, in the county aforeſaid; to the damage of the ſaid James of one hundred pounds; and therefore he brings ſuit, &c.

V. LAWES.

Plea. And the ſaid ſir Richard and John, by Thomas Lane their attorney, come and defend the wrong and injury, when, &c. and ſay, that they are not guilty of the premiſes above laid to their charge in manner and form as the ſaid James hath above thereof complained againſt them; and of this they put themſelves upon the country; and the ſaid James doth the like, &c.: therefore let a jury come before our lord the king at Weſtminſter on next after twelve, &c by whom, &c. and who neither, &c. becauſe as well, &c. the ſame day is given to the a rties aforeſaid, at the ſame place.

MIDDLE-

Declaration againſt ſheriff of Suſſex for a falſe return to a *fieri facias* ſued out on a judgment recovered by plaintiff in B.R. the return was *nulla bona*.

MIDDLESEX, to wit. George Hodgſon complains of Richard Wyat, eſquire, ſheriff of the county of Suſſex, being, &c.; for that whereas the ſaid George heretofore, to wit, in Michaelmas Term laſt paſt, in the twenty-ſeventh year of the reign of our ſaid lord the king, in the court of our ſaid lord the king, before the king himſelf (the ſame court then and ſtill being at Weſtminſter, in the ſaid county of Middleſex), by bill, and without the writ of our ſaid lord the king, and by the conſideration and judgment of the ſame court, recovered againſt one Thomas Dennett, gentleman, as well a certain debt of three hundred pounds as ſixty-three ſhillings which were adjudged by the ſame court to the ſaid George for his damages which he had ſuſtained as well by reaſon of the detaining of that debt as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid Thomas was convicted, as by the record and proceedings thereof remaining in the ſame court of our ſaid lord the king here, before the king himſelf, at Weſtminſter aforeſaid, more fully appears; which ſaid judgment ſtill remains in full force, ſtrength, and effect, in no wiſe reverſed, vacated, or annulled, paid off, or ſatisfied; and the ſaid judgment ſo remaining in full force, ſtrength, and effect, in no wiſe reverſed, vacated, or annulled, and the ſaid debt and damages not being paid or ſatisfied to the ſaid George, he the ſaid George, for obtaining of the ſaid debt and damages aforeſaid, afterwards, to wit, on the twelfth of February, in the twenty-ſeventh year of the reign of our ſaid lord the king, proſecuted out of the court of our ſaid lord the king, before the king himſelf (the ſame court then, &c.), a certain writ of our ſaid lord the king of *fieri facias*, directed to the ſheriff of Suſſex, by which ſaid writ the ſaid lord the king commanded the ſaid ſheriff that he ſhould cauſe to be made of the goods and chattels of the ſaid Thomas the debt and damages aforeſaid, in form aforeſaid recovered, and that the ſaid ſheriff ſhould have the money before the ſaid lord the king on Wedneſday next after fifteen days from the day of Eaſter, to render to the ſaid George for the debt and damages aforeſaid, whereof the ſaid Thomas was convicted as aforeſaid, and that the ſaid ſheriff ſhould have there then that writ, which ſaid writ afterwards, and before the return thereof, to wit, on the thirtieth of March 1787, at Weſtminſter aforeſaid, in the ſaid county of Middleſex, was delivered to the ſaid Richard, who then, and continually from thence until and after the ſaid return of that writ, was and ſtill is ſheriff of the ſaid county of Suſſex, to be executed in due form of law; and the ſaid George avers, that at the time of the delivery of the ſaid writ of *teſtatum fieri facias* to the ſaid Richard as aforeſaid, and afterwards and before the return of that writ, that is to ſay, on the ſame day and year laſt aforeſaid, the ſaid Thomas had divers goods and chattels within the bailiwick of the ſaid Richard, which might have made and levied the debt and damages aforeſaid, as he was by the ſaid writ commanded, to wit, at Weſtminſter aforeſaid, in the county of Middleſex aforeſaid;

nevertheleſs the ſaid Richard, ſo being ſheriff of the ſaid county of Suſſex, not regarding the duty of his office of ſheriff in that behalf, but contriving and fraudulently intending to deceive the ſaid George, and to defraud him of his ſaid debt and damages aforeſaid, did not make or levy the debt and damages aforeſaid, or any part thereof, of the goods and chattels of the ſaid Thomas, but wholly refuſed and neglected ſo to do, and at the return of the ſaid writ did falſely, fraudulently, and deceitfully return upon the ſaid writ to our ſaid lord the king, in the court of our ſaid lord the king, before the king himſelf (the ſame court then, &c.), that the ſaid Thomas had not any goods or chattels in his bailiwick whereof or whereby he could cauſe the debt or damages aforeſaid, or any part thereof, to be levied; and by reaſon of the premiſes the ſaid George is deprived of his remedy for obtaining his debt and damages, and hath wholly loſt the ſame, to wit, at Weſtminſter aforeſaid, in the ſaid county of Middleſex; to the damage, &c. *Drawn by* Mr. GRAHAM.

Trinity Term, 27. Geo. III.

Declaration againſt the ſheriff of London. 1ſt Count, ſtating that having arreſted one J. G. at the ſuit of plaintiff, they voluntarily ſuffered him to eſcape, and returned *non eſt inventus*.

GERING, JUNIOR, *againſt* LE MESURIER AND ANOTHER, ESQUIRES. } MIDDLESEX, to wit. Richard Geering the younger complains of Paul le Meſurier and Charles Higgins, eſquires, being, &c. of a plea of treſpaſs on the caſe; for that whereas one John Gilbert, before and at the time of the ſuing out and the delivery of the writ hereinafter next mentioned to the ſaid Paul and Charles, being ſheriffs as aforeſaid, at Weſtminſter, in the ſaid county of Middleſex, was and ſtill is indebted to the ſaid Richard in a large ſum of money, to wit, in the ſum of one hundred and thirty-nine pounds, of lawful money of Great Britain ‡: (*a*) And whereas, by the courſe and cuſtom of the court of our lord the king, before the king himſelf here, a writ of *latitat*, ſued out after the end of any term, and before the next enſuing term, is ſuppoſed to have iſſued out of the ſaid court here within the term then preceding: And whereas the ſaid Richard afterwards, and after the twelfth day of February, the ſame being the laſt day of Hilary Term, in the twenty ſeventh year of the reign of our ſaid lord the now king, and after the ſaid John became indebted to the ſaid Richard as aforeſaid, and before the next enſuing term, to wit, on the fifth of March, in the year of Our Lord 1787, for the recovery of the ſaid ſum of one hundred and thirty-nine pounds ſo due and owing to him as aforeſaid, proſecuted out of the court of our ſaid lord the King, before the king himſelf (the ſaid court then and ſtill being at Weſtminſter, in the ſaid county of Middleſex), a certain writ of our ſaid lord the king called a *latitat*, directed to the ſaid ſheriffs of London, and witneſſed the ſaid twelfth

(*a*) The debt accrued to plaintiff in Hilary Vacation, and *latitat* was teſted as of laſt day of Hilary Term preceding.

day

day of February, being the laſt day of the term next preceding the time of ſuing out the ſaid writ, by which ſaid writ, amongſt other things, our ſaid lord the king commanded the ſaid ſheriffs that they ſhould take the ſaid John Gilbert, if he ſhould be found in their bailiwick, and ſafely keep him, ſo that they might have his body before our ſaid lord the king at Weſtminſter on Wedneſday next after fifteen days from the day of Eaſter, to anſwer to the ſaid Richard in a plea of treſpaſs, and alſo to a bill of the ſaid Richard againſt the ſaid John for two hundred pounds upon promiſes, and that the ſaid ſheriffs ſhould have there then that writ, which ſaid writ was then and there duly indorſed for bail by affidavit made, affiled according to the form of the ſtatute in ſuch caſe made and provided, for one hundred pounds and upwards, which ſaid writ was ſo as aforeſaid ſued and proſecuted, to the intent that the ſaid John might be arreſted and taken ‡, and which ſaid writ, ſo indorſed for bail as aforeſaid, and ſued and proſecuted as aforeſaid, afterwards, and before the return thereof, to wit, on the fifteenth of March 1787 aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, was delivered by the ſaid Richard to the ſaid Paul Le Meſurier, eſquire, and Charles Higgins, eſquire, who then and continually from thence until and at and after the return of the ſaid writ, were, and ſtill are ſheriffs of London aforeſaid, to be executed in due form of law: And the ſaid Paul and Charles, ſo being ſheriffs of London as aforeſaid, afterwards, and before the return of the ſaid laſt-mentioned writ, to wit, on the ſame day and year laſt aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, took and arreſted the ſaid John by his body, and had him in cuſtody there for the cauſe aforeſaid; nevertheleſs the ſaid Paul and Charles, not regarding the duty of their ſaid office of ſheriffs of London aforeſaid, but wrongfully and injuriouſly contriving and intending to deceive the ſaid Richard, and alſo to hinder the proceedings of the ſaid Richard in his ſuit againſt the ſaid John, and to deprive him of his remedy for the recovery of the money due and owing to him the ſaid Richard from the ſaid John as aforeſaid, afterwards, to wit, on the ſame day and year laſt aforeſaid (the ſaid Richard not being paid or ſatisfied the ſaid money ſo due and owing to him as aforeſaid), without the licence and againſt the will of the ſaid Richard, and without any legal authority whatſoever, voluntarily, and wrongfully, and injuriouſly permitted and ſuffered the ſaid John, being in their cuſtody as aforeſaid, to eſcape out of their ſaid cuſtody, and to go at large whither he would, to wit, at Weſtminſter aforeſaid, in the county aforeſaid; and the ſaid Paul and Charles ſo being ſheriffs as aforeſaid, at the return of the ſaid writ, falſely and deceitfully returned in the ſaid laſt-mentioned writ to the court here that the ſaid John was not found in their bailiwick; and the ſaid John did not, at the return of the ſaid writ, or at any other time, appear in the ſaid court of our ſaid lord the king before the king himſelf here, to wit, at Weſtminſter aforeſaid, to anſwer to the ſaid Richard in the plea aforeſaid, by reaſon whereof the ſaid Richard was and is

Count, that ing J. G. in r, they neg- ed to arreſt , and re- ied non eſt

deprived of the means of the recovery of the ſaid ſum of money ſo due and owing to him as aforeſaid, and has wholly loſt the ſame, to wit, at Weſtminſter aforeſaid, in the county aforeſaid: And whereas alſo the ſaid John, before and at the time of the ſuing out and delivery of the writ hereinafter mentioned to the ſaid Paul and Charles, being ſheriffs as aforeſaid, at Weſtminſter, in the county of Middleſex, was and ſtill is indebted to the ſaid Richard in another large ſum of money, to wit, in the ſum of other one hundred and thirty-nine pounds of like lawful money [ſame as in the firſt Count from this ‡ to this ‡], and which ſaid laſt-mentioned writ afterwards, and before the return thereof, to wit, on the ſaid fifth of March 1787, at, &c. was delivered by the ſaid Richard to the ſaid Paul and Charles, then, and continually from thence until and at and after the return of the ſaid laſt-mentioned writ, were and ſtill are ſheriffs of London as aforeſaid, afterwards, and before the return of the ſaid laſt-mentioned writ, to wit, on the ſame day and year laſt aforeſaid, at Weſtminſter aforeſaid, in the county aforeſaid, had notice and information of the ſaid John being within their ſaid bailiwick, and had the ſaid John in their view and preſence within their ſaid bailiwick, ſo that they the ſaid Paul and Charles, ſo being ſheriffs as aforeſaid, if they had been minded or deſirous ſo to do, could and might then and there have taken and arreſted the ſaid John by his body by virtue of the ſaid laſt-mentioned writ; nevertheleſs the ſaid Paul and Charles, ſo being ſheriffs as aforeſaid, not regarding the duty of their ſaid office of ſheriffs of London aforeſaid, but contriving and intending to deceive and defraud the ſaid Richard, and alſo to hinder the proceedings of the ſaid Richard in his ſuit againſt the ſaid John, and to deprive him of his remedy for the recovery of the ſaid ſum of money ſo due and owing from him the ſaid John to the ſaid Richard as laſt aforeſaid, did not take or arreſt the ſaid John by his body according to the duty of their ſaid office and the exigency of the ſaid laſt-mentioned writ as they ought to have done, but the ſaid Paul and Charles, and each of them, wilfully neglected the execution of the ſaid laſt mentioned writ, they the ſaid Paul and Charles, ſo being ſheriffs as aforeſaid, falſely and deceitfully returned on the ſaid laſt-mentioned writ to the ſaid court of our ſaid lord the king, before the king himſelf (the ſame court then and ſtill being at Weſtminſter aforeſaid, in the ſaid county of Middleſex), that the ſaid John was not found in their bailiwick, to the great injury and damage of the ſaid Richard; and the ſaid John did not appear in the ſaid court of our ſaid lord the king, before the king himſelf here, to wit, at Weſtminſter aforeſaid, at the return of the ſaid laſt-mentioned writ, or at any other time, to anſwer to the ſaid Richard in the plea laſt aforeſaid; by reaſon whereof the ſaid Richard was and is deprived of the means of the recovery of the ſaid laſt-mentioned ſum of money ſo due and owing to him as laſt aforeſaid, and has wholly loſt the ſame, to wit, at, &c.; to the damage of the ſaid Richard of one thouſand pounds; and therefore he brings ſuit, &c. Pledges, &c.

Drawn by L. GRAHAM.

Declaration against the ſheriff of Middleſex for returning to a *capias ad reſpondendum* that plaintiff reſcued the perſon arreſted, upon which an attachment iſſued againſt plaintiff, and he was impriſoned and put to great expence.

MIDDLESEX, to wit. John Barnard, late of, &c. and ſir R. Goodſchall, late of, &c. ſheriffs of Middleſex, were attached to anſwer G. Graham of a plea of treſpaſs on the caſe, &c; and whereupon the ſaid G. by A. B. his attorney, complains, that whereas on the third of October, &c. a certain writ of our ſaid lord the king called a *capias ad reſpondendum*, iſſued out of his majeſty's court of common pleas here, to wit, at Weſtminſter, in the ſaid county of Middleſex, at the ſuit of one J. Ord againſt one B. Arrington, directed to the then ſheriffs of Middleſex, by which ſaid writ the ſaid lord the king commanded the ſaid ſheriff of Middleſex to take the ſaid B. Arrington, &c. [here ſet out the writ], which ſaid writ afterwards, and before the return thereof, to wit, on the firſt of November, at Weſtminſter aforeſaid, was delivered to the ſaid plaintiffs, ſo being ſheriffs of the county of Middleſex aforeſaid, to be executed in due form of law; yet the ſaid plaintiffs, ſo being ſheriffs of the ſaid county of Middleſex, not minding the duty of the ſaid office of ſheriff of the ſaid county, but falſely and maliciouſly contriving and intending to oppreſs, vex, diſturb, and damnify the ſaid G. and to bring the ſaid G. into the contempt of our ſovereign lord the king, and of this court here, and to cauſe the ſaid G. to be wrongfully impriſoned, and to be kept and detained in priſon, and to impoveriſh him, afterwards, to wit, at the return of the ſaid writ, that is to ſay, on the morrow of Saint Martin now laſt paſt, falſely, deceitfully, and fraudulently returned and gave anſwer to the then juſtice of his majeſty's court here of, upon, and concerning the ſaid writ, that by virtue of the ſaid writ he the ſaid ſheriff made his warrant directed to W. B. W. G. and P. G. his bailiff of the hundred of O. in the ſaid county of the ſaid ſheriffs, jointly and ſeverally to take and arreſt the ſaid B. A. in the ſaid writ named; by virtue of which ſaid warrant the ſaid W. B. afterwards, and before the return of the ſaid writ, to wit, on the third of November, in the year aforeſaid, at the pariſh of Saint Clement Danes, within the ſaid hundred of O. in the bailiwick of the ſaid ſheriffs, did take and arreſt the ſaid B. A. according to the command of the ſaid writ, and then and there kept him in cuſtody until the ſaid G. Graham and divers other perſons unknown to him the ſaid ſheriff and the ſaid W. B. at Saint Clement Danes aforeſaid, with force and arms, in and upon the ſaid W. B. bailiff aforeſaid of the ſaid ſheriff, made an aſſault, and beat, wounded, and ill treated him, and then and there reſcued, and each and every of them did then and there reſcue the ſaid B. out of the cuſtody of the ſaid W. B. bailiff of the ſaid ſheriffs as aforeſaid, and againſt the will of the ſaid ſheriff, and againſt the will and without the conſent of the ſaid W. B. and him the ſaid B. A. did permit to go at large where he pleaſed, and that the ſaid B. A. did then and there, with force and arms, reſcue himſelf and eſcape out of the cuſtody of the ſaid W. B. the ſaid ſheriff's bailiff, againſt the will of the ſaid ſheriffs, and againſt the will and conſent of the ſaid W. B. and againſt the peace of our ſaid ſovereign lord the king; and that afterwards, and

before

before the return of the ſaid writ, the ſaid B. A. was not found in the ſaid ſheriffs' bailiwick, and that therefore the ſaid ſheriffs could not have the body of the ſaid B. A. before the king's juſtices at the day and place in the ſaid writ mentioned as by the ſaid writ he was commanded, as by the ſaid writ and return thereof now remaining, on record affiled with the keeper of the writs of his majeſty's court here, may more fully and at large appear: Whereas in truth and in fact the ſaid G. was not, nor is any ways guilty of the ſaid premiſes above by the return of the ſaid writ laid to his charge, or any part thereof; by means of which falſe, fraudulent, and deceitful return, afterwards, to wit, in Hilary Term now laſt paſt, a certain writ of our ſaid lord the king called an attachment iſſued out of this court againſt the ſaid G. G. directed to the ſaid ſheriffs of Middleſex, whereby the ſaid ſheriff was commanded to take the ſaid G. G. before the ſaid juſtices of our ſaid lord the king at Weſtminſter in eight days of the Purification of the Bleſſed Virgin Mary then next enſuing, to anſwer to our ſaid lord the king of certain treſpaſſes, reſcues, and contempts by him the ſaid ſheriff, certified before the king's ſaid juſtices at Weſtminſter on the morrow of Saint Martin laſt paſt, &c. as by the ſaid writ now remaining of record more fully appears; by virtue of which ſaid laſt-mentioned writ the ſaid G. G. afterwards, to wit, on the ſecond of February, in the year aforeſaid, at the pariſh of Saint Clement Danes, in the county aforeſaid, by the ſaid ſheriff, was taken and arreſted by his ſaid body, and impriſoned, and kept and detained in priſon by the ſaid ſheriffs until the ſaid G. G. afterwards, to wit, on the ninth of February, in the year aforeſaid, at Weſtminſter aforeſaid, was duly diſcharged out of the cuſtody of the ſaid ſheriff by the juſtices of his majeſty's court here, and by reaſon of the premiſes he the ſaid G. G. was and is much hurt, prejudiced, damaged, vexed, moleſted, and diſturbed, and was forced to lay out and expend divers large ſums of money, in the whole amounting to the ſum of fifty pounds, in and about his obtaining his enlargement from his ſaid impriſonment, and in and about his defence in the premiſes, to wit, at, &c.; to the damage, &c. *Drawn by* J. GRAHAM.

Declaration againſt a ſheriff for making a falſe return, whereby plaintiff loſt the opportunity of recovering his debt and damages on judgment he had recovered.

MIDDLESEX, to wit. John Lethbridge, eſquire, ſheriff of the county of Somerſet, was attached to anſwer John Stacie in a plea of treſpaſs on the caſe; and thereupon the ſaid J. S. by A. B. his attorney, complains; for that whereas he the ſaid J. S. heretofore, to wit, in Michaelmas Term, in the ſixteenth year of the reign of our lord the now king, in his majeſty's court, before ſir William De Grey, knight, and his brethren, then his majeſty's juſtices of the bench at Weſtminſter, by the conſideration of the ſaid court, recovered againſt one ſir Charles Warwick Bamfylde, baronet, by the name and addition of Charles Warwick Bamfylde, late of, &c. as well a certain debt of two thouſand pounds as alſo ſixty-three ſhillings, which in and by the ſaid court were

awarded to the ſaid J. S. for his damages which he had ſuſtained as well by reaſon of the detaining of the ſaid debt as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid ſir C. W. B. was convicted, as by the record and proceedings thereof, ſtill remaining in his majeſty's court of the bench here, to wit, at W. in the ſaid county of Middleſex, more fully appears; which ſaid judgment ſtill remains in full force, not reverſed, annulled, paid off, or ſatisfied; and the ſaid judgment ſo being in force and unſatisfied, he the ſaid J. S. for *the obtaining of his ſaid debt and damages ſo by him recovered as aforeſaid* (1), afterwards, to wit, on, &c. in the twenty-ninth year of the reign of our lord the now king, ſued and proſecuted out of his majeſty's court of the bench here a certain writ of our ſaid lord the king called *an alias non omittas teſtatum fieri facias* of and upon the ſaid judgment, directed to the ſheriff of the ſaid county of S. by which ſaid writ our ſaid lord the king commanded the ſaid ſheriff as before he had been commanded, that he ſhould omit not by reaſon of any liberty in his bailiwick, but that he ſhould cauſe to be made of the goods and chattels of the ſaid ſir C. W. B. the ſaid debt and damages ſo recovered by the ſaid J. S. as aforeſaid, and that he the ſaid ſheriff ſhould have that money before our ſaid lord the king's juſtices at Weſtminſter on, &c. to render to the ſaid J. S. for his ſaid debt and damages whereof the ſaid ſir W. B. was convicted as aforeſaid, and that the ſaid ſheriff ſhould have there that writ, which ſaid writ afterwards, and before the delivery thereof, to wit, on, &c. at, &c. was delivered to the ſaid defendant, who then, and from thence until and at and after the return of the ſaid writ, was ſheriff of the ſaid county of S. to be executed in due form of law (2): And the ſaid J. S. avers, that the ſaid ſir C. W. B. at the time of the delivery of the ſaid laſt-mentioned writ to the ſaid defendant, ſo being ſheriff of the ſaid county of S. as aforeſaid, for ſuch execution thereof as aforeſaid, and afterwards, and between that time and the return of the ſaid writ, had divers goods and chattels in the bailiwick of the ſaid ſheriff of the ſaid county of S. to a large value, to wit, to the value of the *debt and damages aforeſaid* (3), whereof the ſaid defendant, as ſuch ſheriff as aforeſaid, could, might, and ought to have made and levied, and cauſed to be made and levied the ſaid *debt and damages* (4), whereof the ſaid J. S. then and there had due notice; yet the ſaid defendant, ſo then and there being ſuch ſheriff as aforeſaid, not regarding the duty of his ſaid office of ſheriff of the ſaid county of S. but contriving and fraudulently intending to hurt and injure the ſaid J. S. in this behalf, and to deprive him of his *aforeſaid debt and damages* (5), and to cauſe him wholly to loſe the ſame, did not make or levy, or cauſe to be made or levied of the goods and chattels of the ſaid ſir C. W. B. or of any other

(1) "having execution thereof"

(2) "with a certain indorſement thereon made, directing the ſaid ſheriff to levy, by virtue of the ſaid laſt-mentioned writ, nine hundred and fifty-ſeven pounds, beſides ſheriff's poundage, officers fees, and other incidental expences"

(3) "money to be by the ſaid indorſement the ſaid laſt-mentioned writ directed to be levied as aforeſaid"

(4) "money ſo by ſuch indorſement on the ſaid laſt-mentioned writ as aforeſaid directed to be levied as aforeſaid"

(5) "ſo much of his aforeſaid damages as by the ſaid indorſement ſo made on the ſaid laſt-mentioned writ as aforeſaid was ſo directed to be levied as aforeſaid"

goods

goods and chattels in his the ſaid ſheriff's bailiwick, the ſaid debt and damages, (6) or any part thereof, but omitted and neglected ſo to do, and therein wholly failed and made default, and at the return of the ſaid writ, to wit, on, &c. falſely and deceitfully returned upon the ſaid writ to our ſaid lord the king's juſtices of the bench at Weſtminſter aforeſaid, in the ſaid county of Middleſex, that the ſaid ſir C. W. B. had not any goods and chattels within his the ſaid ſheriff's bailiwick whereof he could cauſe to be made the debt and damages in the ſaid writ mentioned, or any part thereof, as by the ſaid writ and return thereof now remaining of record in the ſaid court of our ſaid lord the king of the bench here, to wit, at Weſtminſter aforeſaid, in the ſaid county of Middleſex, more fully appears; by means of which ſaid premiſes the ſaid J S. was and hath been greatly retarded and hindered from the obtaining of his ſaid debt and damages ſo by (7) *him in form aforeſaid recovered*, and hath wholly loſt the ſame, to wit, at, &c.: And whereas the ſaid J. S. heretofore, to wit, in Michaelmas term, in the ſixteenth year of, &c. before, &c. recovered, &c. &c. [finiſh this Count ſame as the firſt, only omitting what is in Italic and inſerting in lieu thereof what is in the margin].

(6) "ſo by the indorſement made on the laſt-mentioned writ directed to be levied aforeſaid"

(7) "the ſaid indorſement on the ſaid laſt-mentioned writ directed to be levied as aforeſaid"

V. LAWES.

AGAINST OFFICERS ACTING IN A PUBLIC MINISTERIAL CAPACITY.

Declaration againſt the collector of the cuſtoms of the port of Carliſle, for refuſing to make an entry of goods which plaintiff was going to export, whereby plaintiff was hindered from exporting, and put to expence, &c.

Hilary Term, 24. Geo. III.

LANCASHIRE, to wit. Edward Whiteſide complains of William Hodgſon, eſquire, being in the cuſtody, &c. in a plea of treſpaſs on the caſe; for that whereas the ſaid plaintiff heretofore, to wit, on the firſt of Auguſt, in the year of Our Lord 1783, was lawfully poſſeſſed of a certain large quantity of wheat, that is to ſay, a certain large quantity of middling Britiſh wheat, and of a certain large quantity of ſuch wheat flour, as of his own proper goods and chattels; and being ſo poſſeſſed, he the ſaid plaintiff intended, and was then about to export the ſaid wheat and wheat flour from the port of Carliſle, in the county of Cumberland, to the port of Dublin, in the kingdom of Ireland, and for that purpoſe had engaged a certain ſhip or veſſel, then lying and being in the ſaid port of Carliſle, and had in due manner ſhipped and put the ſaid wheat and wheat flour in and on board the ſaid ſhip or veſſel, to wit, at Liverpool, in the ſaid county of Lancaſter: And whereas the ſaid defendant, on the day and year aforeſaid, and from thence until, and at, and after the committing of the ſeveral grievances hereafter mentioned, was the collector of the cuſtoms at the ſaid port of Carliſle as aforeſaid; ‡ and the ſaid plaintiff, being ſo poſſeſſed of ſuch wheat *and wheat flour* as aforeſaid, and being about to export the ſame as aforeſaid, he the ſaid plaintiff, juſt before the committing of the grievance

hereafter

hereafter next-mentioned, to wit, on the day and year aforeſaid, at, &c. aforeſaid, gave notice of and declared ſuch his intention to export the ſaid wheat *and wheat flour* as aforeſaid to the ſaid defendant, as ſuch collector of the cuſtoms at the ſaid port of Carliſle as aforeſaid, and then and there offered to make the due and proper entry of the ſaid wheat *and wheat flour* for exportation as aforeſaid with him the ſaid defendant as ſuch collector of the cuſtoms as aforeſaid, and then and there requeſted and required him, as ſuch collector of the cuſtoms as aforeſaid, to accept and receive, and to take and make ſuch entry of the aforeſaid wheat *and wheat flour* for exportation as aforeſaid, in order that the ſame might be exported without being liable to ſeizure, and in order that he the ſaid plaintiff might become entitled to and receive the bounty payable upon the exportation thereof: And the ſaid plaintiff in fact further ſaith, that although he the ſaid plaintiff could and might have then and there lawfully exported the ſaid wheat *and wheat flour*, the average price thereof at the public market at the ſaid port of Carliſle, then and on the laſt market day preceding the aforeſaid ſhipping thereof, not being at or above the price of forty-four ſhillings per quarter, but under and leſs than ſuch price; and although the ſaid defendant, according to his duty as ſuch collector of the cuſtoms at the ſaid port of Carliſle as aforeſaid, ought to have then and there accepted and received, and to have taken and made ſuch entry of the ſaid wheat *and wheat flour* for exportation as aforeſaid, ſo being ſuch collector of the cuſtoms at the ſaid port of Carliſle as aforeſaid; yet the ſaid defendant, not regarding his duty as ſuch collector at the ſaid port of Carliſle as aforeſaid, but contriving and maliciouſly intending to injure the ſaid plaintiff, and to hinder and prevent him from exporting the ſaid wheat *and wheat flour* as aforeſaid, and to deprive him of the bounty and all other benefits and advantages on the exportation thereof, did not when he was ſo requeſted and required as aforeſaid, or at any other time whatſoever, enter the ſaid wheat *and wheat flour* of him the ſaid plaintiff for exportation as aforeſaid, or take, or receive, or ſuffer, or permit him the ſaid plaintiff to make ſuch entry thereof, but then and there, (1) *and until the exportation of a part thereof as hereafter mentioned*, wholly refuſed ſo to do; ‖ whereby the ſaid plaintiff became unable to export the ſaid wheat and wheat flour, and in conſequence thereof was obliged to unload the ſame from and out of the ſaid veſſel ſo by him engaged to export the ſame as aforeſaid, and on that occaſion, and in and about the landing, housing, and taking care of and reſhipping of the ſame as hereafter mentioned, was obliged to lay out and expend a large ſum of money; and although the ſaid plaintiff did afterwards export the ſaid wheat and wheat flour, and a part of the ſaid wheat ſo by him ſhipped for exportation as aforeſaid, yet the ſaid plaintiff was, by reaſon and means, and in conſequence of the ſaid defendant's refuſing to make ſuch entry as aforeſaid, entirely hindered and prevented from exporting the reſidue of the ſaid wheat, and thereby loſt and was deprived of

(1) "and ways a wards,"

of the bounty that would have been payable on the ſaid exportation thereof, and was ultimately obliged at a conſiderable inconvenience and expence, to ſend the ſame coaſtwiſe to the port of Liverpool, in this kingdom, in another and different veſſel than the ſaid veſſel ſo by him engaged as aforeſaid, and there to diſpoſe of the ſaid laſt-mentioned wheat, at and for a much leſs ſum of money than the ſame would have ſold for had it been ſo exported as aforeſaid, and was for a long ſpace of time hindered and prevented from exporting the ſaid wheat flour and wheat ſo by him exported as aforeſaid, and when he ſo exported the ſame was obliged to export and tranſport the ſame from the ſaid port of Carliſle to the ſaid port of Dublin in another and different veſſel, and on occaſion, and by reaſon, and means of his aforeſaid engagement for a veſſel to export the ſaid wheat and wheat flour ſo by him intended to be exported as aforeſaid, and of the ſaid veſſel ſo by him engaged for that purpoſe as aforeſaid being detained at the ſaid port of Carliſle for the purpoſe, and in expectation of exporting the ſaid wheat and wheat flour as aforeſaid, he the ſaid plaintiff was forced and obliged to pay a large ſum of money by way of compenſation, ſatisfaction, and equivalent for the ſaid ſhip or veſſel being ſo detained as aforeſaid, and not being employed in the exportation of the ſaid wheat and wheat flour, according to the aforeſaid engagement of him the ſaid plaintiff in that behalf, to wit, at, &c. aforeſaid: And whereas the ſaid plaintiff heretofore, to wit, on the ſeventeenth of Auguſt 1783 aforeſaid, was lawfully poſſeſſed of a certain other large quantity of wheat, to wit, two hundred quarters of middling Britiſh wheat, as of his own proper goods and chattels; and being ſo poſſeſſed, he the ſaid plaintiff intended, and was then about to export the ſame laſt-mentioned wheat from the port of Carliſle aforeſaid, to the ſaid port of D. in the kingdom of Ireland, and for that purpoſe had engaged a certain other ſhip or veſſel, called the Elizabeth, whereof Thomas Rogerſon was the captain or commander, then lying and being in the ſaid port of Carliſle, and had in due manner ſhipped and put the ſaid laſt-mentioned wheat in and on board the ſaid laſt-mentioned ſhip or veſſel, to wit, at, &c. aforeſaid, &c. [go on as in the firſt Count from this mark ‡ to this mark ‖, omitting what is in Italic, then proceed as follows]; whereby the ſaid plaintiff was hindered and prevented from, and loſt the opportunity of exporting the ſaid laſt-mentioned wheat of him the ſaid plaintiff from the ſaid port of Carliſle to the ſaid port of Dublin, and was in conſequence thereof obliged to ſend the ſame coaſtwiſe to the port of Liverpool, in this kingdom, and there to ſell the ſame, for a much leſs ſum of money than the ſame wheat would have produced had the ſame been exported as aforeſaid; whereby and by reaſon and means of which ſaid ſeveral premiſes he the ſaid plaintiff was not only injured and damnified in reſpect of the produce of his ſaid laſt-mentioned wheat in manner aforeſaid, but wholly loſt the bounty, and all other benefit and advantage that would have ariſen and accrued to him on ſuch exportation thereof as aforeſaid; and by reaſon and means

2d Count, loſs of bounty, and obliged to ſell coaſtwiſe.

means of the ſaid laſt-mentioned wheat not being ſo exported as aforeſaid, in the ſaid ſhip or veſſel ſo by him engaged for that purpoſe as aforeſaid, he the ſaid plaintiff was obliged to pay to the ſaid John Rogerſon, the captain or commander of the ſaid laſt-mentioned ſhip, &c. a large ſum of money, to wit, &c. by way of and as and for a compenſation, ſatisfaction, and equivalent for the ſaid laſt-mentioned ſhip or, &c. not being employed in ſuch exportation, and for and on account of extra delay and detention in his carrying the ſaid laſt-mentioned wheat to the ſaid port of Liverpool, to wit, at, &c. aforeſaid: And whereas the ſaid plaintiff heretofore, to wit, on the ſeventeenth day of Auguſt, A. D. 1783 aforeſaid, in due manner ſhipped and put on board a certain other ſhip or veſſel, called the Elizabeth, whereof one Thomas Rogerſon was captain or commander, lying and being at the port of Carliſle, a certain other quantity of wheat, to wit, two hundred quarters of middling Britiſh wheat of him the ſaid plaintiff, for the purpoſe of the ſame being exported in the ſaid laſt-mentioned ſhip or veſſel from the port of Carliſle to the ſaid port of Dublin, in the kingdom of Ireland, and the ſaid plaintiff was then and there about to make the due and proper entry with the proper officer of his majeſty's cuſtoms at the ſaid port of Carliſle, to warrant ſuch exportation of the ſaid laſt-mentioned corn, and although he the ſaid plaintiff could and might have then and there lawfully exported the ſaid laſt-mentioned wheat, the average price thereof at the public market at the ſaid port of Carliſle, then and on the laſt market day preceding the ſaid ſhipping thereof, not being at or above the price of forty-four ſhillings per quarter, but under and leſs than ſuch price; yet the ſaid defendant, ſo being ſuch collector of the cuſtoms at the ſaid port of Carliſle as aforeſaid, and well knowing all and ſingular the premiſes laſt aforeſaid, but further contriving and attempting to injure him the ſaid plaintiff, and to deprive him of the bounty, and all other benefit and advantage, and on ſuch exportation of the ſaid laſt-mentioned wheat of him the ſaid plaintiff as aforeſaid, and otherwiſe to injure him, whilſt the ſaid wheat was ſo on board the ſhip or veſſel, called, &c. at the ſaid port of Carliſle for the purpoſe of exportation as aforeſaid, and before the ſaid plaintiff had or could enter the ſame for exportation as aforeſaid, to wit, on the day and year laſt-aforeſaid, to wit, at, &c. aforeſaid, he the ſaid defendant, as ſuch collector of the cuſtoms at the ſaid port of Carliſle, under pretext and pretence of his ſaid office as ſuch collector of the cuſtoms at the ſaid port of Carliſle as aforeſaid, and under pretext and pretence of having a legal cauſe for ſo doing, did wrongfully and maliciouſly, and without any juſt, reaſonable, or probable cauſe whatſoever, ſeize and take poſſeſſion of, and keep and detain, and cauſe and procure poſſeſſion of the ſaid laſt-mentioned ſhip or veſſel, called the Elizabeth, to be ſeized and taken, and the ſaid laſt-mentioned ſhip or veſſel to be kept and detained at and in, and to be hindered and prevented from ſailing from the ſaid port of C. for a long ſpace of time then next following, and until the aver-

3d Count, detaining a veſſel in which plaintiff had loaded goods for exportation, until the average price of ſuch goods aroſe to an amount higher than they are permitted to be exported from this kingdom.

age price of ſuch wheat ſo ſhipped and put on board the ſaid laſt-mentioned ſhip or, &c. by the ſaid plaintiff as aforeſaid, at the public market at the ſaid port of C. had ariſen and was above the price at which ſuch wheat was and is allowed to be exported from this kingdom, to wit, at, &c. aforeſaid; whereby the ſaid plaintiff was hindered and prevented from, and loſt the opportunity of exporting the ſaid laſt-mentioned wheat of him the ſaid plaintiff from the ſaid port of C. to the aforeſaid port of D. and was in conſequence obliged to ſend the ſame coaſtwiſe from the ſaid port of C. to the ſaid port of L. in this kingdom, and there to ſell the ſame for a much leſs ſum of money than the ſaid wheat would have produced had the ſame been ſo exported as aforeſaid; whereby and by reaſon and means of which ſaid ſeveral premiſes, he the ſaid plaintiff was not only injured and damnified in reſpect of the produce of the ſaid laſt-mentioned wheat in manner aforeſaid, but wholly loſt the bounty and all other benefit and advantage that would have ariſen and accrued to him on ſuch exportation thereof as aforeſaid; and by reaſon and means of the ſaid wheat not being ſo exported in the ſaid laſt mentioned veſſel, called the Elizabeth, in which he the ſaid plaintiff had, before the committing of the ſaid laſt-mentioned grievance by the ſaid defendant, engaged to export the ſaid laſt-mentioned wheat to the ſaid port of Dublin, he the ſaid plaintiff was obliged to pay to the ſaid T. Rogerſon, the captain or commander of the ſaid laſt-mentioned ſhip or veſſel, a large ſum of money, to wit, the ſum of five pounds five ſhillings, by way of, and as and for a compenſation, ſatisfaction, and equivalent, for the ſaid laſt-mentioned ſhip or veſſel not being employed in ſuch exportation, and for and on account of extraordinary delay and detention in her carrying the ſaid laſt-mentioned wheat to the ſaid port of Liverpool as aforeſaid, to the damage of the ſaid plaintiff of five hundred pounds, for which he brings his ſuit, &c. Pledges, &c. V. LAWES.

Declaration by plaintiff, a brewer, againſt defendant, an exciſe officer, for charging plaintiff a ſecond time with the duty of exciſe on a quantity of ſtrong beer after his having paid it to another officer, who had gauged the liquor and taken the true quantity; whereby the plaintiff was obliged to petition the commiſſioners to be releaſed from the overcharge, whereby he was put to great expence.

LONDON, to wit. Samuel Whitbread, eſquire, complains of John Chapman, being, &c.; for that whereas he the ſaid Samuel, long before and at the time of the committing of the grievance hereafter next-mentioned, was, and from thence hitherto hath been, and ſtill is, a common brewer of beer and ale for ſale, and the buſineſs of a brewer for and during all that time hath followed, exerciſed, and carried on in a certain brewhouſe of him the ſaid S. ſituate within the compaſs and limits of the *chief office* (*a*) in London for the duties of exciſe, to wit, at London aforeſaid, in the pariſh of St. Giles without Cripplegate, in the ward of Cripplegate Without; and the ſaid Samuel, being ſuch brewer as aforeſaid, he the ſaid Samuel, before the time of the committing of the grievance hereafter next-mentioned, to wit, on, &c. was

(*a*) Erected purſuant to 12. Car. 2. c. 24. and perpetuated by 5. W. and M. c. 20.

lawfully

lawfully poſſeſſed of and in divers, to wit, fourteen barrels, one firkin, and one gallon of a certain exciſeable liquor called *ſtrong beer*, part and parcel of a certain guile of ſtrong beer theretofore brewed and made by the ſaid Samuel in his ſaid brewhouſe, and which ſaid ſtrong beer had been theretofore guaged and taken an account of by the proper officer of and belonging to the exciſe of our lord the now king, and the exciſe duty thereon had alſo been duly ſecured and charged, and the ſaid ſtrong beer then remained *unuſed and unaltered* in the ſaid brewhouſe of the ſaid Samuel, that is to ſay, in a certain veſſel there called a working tun, to wit, at, &c.: And whereas the ſaid Samuel, before and on the day and year aforeſaid, was lawfully poſſeſſed of and in a certain large quantity of exciſeable liquor, called wort, which had been then lately brewed and made by him the ſaid Samuel in his ſaid brewhouſe, that is to ſay, for the purpoſe of being made into ſtrong beer, and then being in the ſaid brewhouſe, that is to ſay, in certain veſſels there called backs, and then being ſubject and liable to be charged with the payment of the duty of exciſe in that caſe provided, and which ſaid liquor called wort, he the ſaid Samuel then and there intended, and was about to let down from and out of the ſaid veſſels called backs, into the ſaid veſſel called a working tun, and therein to mix the ſame with the ſaid ſtrong beer, ſo therein being as aforeſaid, whereby the ſaid liquor, called wort, would come under the denomination of the ſaid exciſeable liquor called ſtrong beer, and would be rendered ſubject and liable to be charged with and to the payment of the duty of exciſe on ſuch liquor, to wit, at, &c.: And whereas the ſaid John, before and on the day and year aforeſaid, and at the time of the committing of the grievance hereafter next-mentioned was, and from thence hitherto hath been, and ſtill is, an officer of and belonging to the exciſe of our lord the now king, to wit, an officer called a ſurveyor, to wit, at London aforeſaid; and the ſaid Samuel being ſuch brewer, and being ſo poſſeſſed and intending as aforeſaid, and the ſaid John being ſuch officer as aforeſaid, afterwards, and before the committing the grievance hereafter next-mentioned, to wit, on, &c. one W. M. then being an officer of and belonging to the ſaid exciſe of our lord the now king, to wit, an officer called a guager, as ſuch officer, came into the ſaid brewhouſe of the ſaid Samuel, and the ſaid W. M. ſo being ſuch officer as aforeſaid, and ſo being in the ſaid brewhouſe of the ſaid Samuel and the ſaid intention of the ſaid Samuel being then and there made known to the ſaid W. M. ſo being ſuch officer as aforeſaid, he the ſaid W. M. as ſuch officer as aforeſaid, and in order to aſcertain the exact duty of exciſe that would be payable by the ſaid Samuel upon his ſaid intention being carried into execution, *did, previous to* the ſaid *intention* of the ſaid Samuel *being carried into execution*, that is to ſay, on the day and year aforeſaid, *guage as well the* ſaid liquor called *wort*, whilſt the ſame remained and was *in the ſaid* veſſels called *backs, as the* ſaid *ſtrong beer* ſo being in the ſaid veſſel called a working *tun* as aforeſaid, and thereby then and there well knew the ſeveral contents thereof; and thereupon

This allegation ſeems eſſentially neceſſary, for if the old beer be in any manner altered it is to be a ſecond time charged. 8. & 9. Wm. 3. c. 29. ſ. 3.

This was done in purſuance of the 21ſt article of the Brewers Inſtructions.

thereupon afterwards, and whilſt the ſaid W. M. ſo being ſuch officer as aforeſaid, was in the ſaid brewhouſe of him the ſaid Samuel, to wit on the day and year aforeſaid, the ſaid exciſeable liquor called *wort* of the ſaid Samuel, ſo being in the ſaid veſſels called backs as aforeſaid, *was in the ſight and view of the ſaid* W. M. ſo being ſuch officer as aforeſaid, *let down* from the ſaid veſſels called backs, into the ſaid veſſel called a working tun, and therein *mixed with ſtrong beer*, ſo therein being and contained as aforeſaid, and thereby came under the denomination of the ſaid exciſeable liquor called ſtrong beer, and became ſubject and liable to be charged with and to the payment of the exciſe duty on ſuch liquor, to wit, at, &c.: And the ſaid Samuel further ſaith, that the ſaid W. M. ſo being ſuch officer as aforeſaid, according to his duty as ſuch officer, did, after the letting down of the ſaid liquor called wort as aforeſaid, from and out of the ſaid veſſels called backs as aforeſaid, in which the ſame was ſo contained as aforeſaid, and mixing the ſame as aforeſaid, to wit, on, &c. guage the whole of the then contents of the ſaid veſſel called a working tun, and upon ſuch guage, ſo much of the ſaid then contents of the ſaid veſſel called a working tun, as had been ſo let down from and out of the aforeſaid veſſels called backs as aforeſaid, were by the ſaid W. M. ſo being ſuch officer as afore ſaid, aſcertained to be the true quantity of the ſaid exciſeable liquor called ſtrong beer, whereon the ſaid Samuel, at the time of the making of the ſaid laſt-mentioned guage, was ſubject and liable to be charged with, and to the payment of the duty of exciſe, to wit, at, &c.; and thereupon the ſaid W. M. ſo being ſuch officer as aforeſaid, afterwards, to wit, on, &c. that is to ſay, in and by a return in writing by him the ſaid W. M. as ſuch officer as aforeſaid, then made to the commiſſioners and governors duly nominated, conſtituted, and appointed for the receipt and management of the duties of exciſe, ariſing, or to ariſe in England, Wales, and Berwick-upon-Tweed, that is to ſay, at the chief office in London for the duties of exciſe, to wit, at, &c. did *return* the ſaid quantity of the ſaid exciſeable liquor, called ſtrong beer laſt-mentioned, as being the true quantity of ſuch liquor, whereon the ſaid Samuel, at the time of the taking and making of the ſaid laſt-mentioned guage by him the ſaid W. M. as aforeſaid, and by the ſaid return of him the ſaid W. M. as ſuch officer as aforeſaid, was liable and ſubject to be charged with and to the payment of the duty of exciſe, to wit, at, &c.: And the ſaid Samuel in fact ſaith, that he the ſaid Samuel *ought not upon or by reaſon of the ſaid return ſo* made by the ſaid W. M. as aforeſaid, to *have been charged with any further duty* of exciſe on *the aforeſaid fourteen barrels, one firkin, and one gallon* of the ſaid exciſeable liquor called *ſtrong beer*, on which the ſaid duty had been ſo as aforeſaid previouſly ſecured and charged; yet the ſaid John, ſo being ſuch officer as aforeſaid, not regarding his duty as ſuch officer as aforeſaid, but neglecting the ſame, and contriving and maliciouſly intending, wrongfully and unjuſtly to injure, prejudice, and damnify the ſaid Samuel, and to put him to great expence, and to vex, haraſs, and

Otherwiſe, the ſtrong beer is liable to be a ſecond time charged, 8. 9. W. 3. c. 19. and 5. Geo. 3. c. 43.

Vide 12. Car. 2. c. 23. ſ. 19. and 25. Car. 2 c. 11. ſ. 5

The averment differs out of 1. W. & M. ſt. 1. c. 24. ſ. 7.

and aggrieve him, after the making of the ſaid return by the ſaid W. M. as aforeſaid, and notwithſtanding the ſame, to wit, on, &c. did again charge the ſaid Samuel, and cauſe him to be again charged with the duty of exciſe on the aforeſaid fourteen barrels, one firkin, one gallon, of the ſaid exciſeable liquor called ſtrong beer, whereon the ſaid duty was ſo ſecured and charged as aforeſaid, and thereby wrongfully and unjuſtly overcharged the ſaid Samuel in the duty of exciſe by him payable at the time of the taking and making of the ſaid laſt-mentioned guage by him the ſaid W. M. as ſuch officer as aforeſaid, to a large amount, to wit, to the amount of four pounds nineteen ſhillings one penny three farthings; whereby he the ſaid Samuel was afterwards, to wit, on, &c. forced and obliged to, and did exhibit *to the commiſſioners and* governors aforeſaid, that is to ſay, at the ſaid chief office in London for the duties of exciſe, a *certain complaint* in writing, thereby complaining of the ſaid overcharge ſo made by the ſaid John in reſpect of the duty of exciſe to be paid by him the ſaid Samuel as aforeſaid, and praying that he might be relieved of and from the payment of ſuch duty ſo overcharged aforeſaid, and he the ſaid Samuel was forced and obliged to, and did proſecute the ſaid complaint ſo by him exhibited as aforeſaid, from thence until and upon the twenty-ſecond of February 1779, when the ſame came on to be heard and determined by and before the commiſſioners and governors aforeſaid, who upon hearing thereof, and upon examination upon oath of the witneſſes produced before them touching and concerning the ſame, and upon the matter of ſuch complaint being duly made out and proved, did relieve the ſaid Samuel of and from the payment of the ſaid duty of exciſe ſo overcharged and complained of as aforeſaid; and the ſaid Samuel was thereof and therefrom in due manner, and according to due courſe of law, diſcharged, and the ſaid complaint was then and there duly ended and determined; by reaſon of which ſeveral premiſes, he the ſaid Samuel was greatly injured, and was forced and obliged to lay out and expend, and did lay out and expend a large ſum of money, to wit, the ſum of fifty pounds, in about the proſecution of the ſaid complaint, and was for a long ſpace of time, to wit, for the ſpace of one month, greatly hindered, prevented, and obſtructed, in carrying on his neceſſary affairs and buſineſs by him during that time to be carried on, and was, and hath been, and is, on occaſion of the ſaid premiſes, otherwiſe greatly injured and damnified, to wit, at, &c.: And whereas, [ſtate plaintiff to be a brewer as in the firſt Count, then proceed thus]; and whereas the ſaid John, before and at the time of the committing of the grievance hereafter next-mentioned, was, and from thence hitherto hath been, and ſtill is, an officer of, and belonging to the exciſe of our lord the now king, to wit, an officer called a ſurveyor; and the ſaid Samuel being ſuch brewer, and the ſaid John being ſuch officer as aforeſaid, he the ſaid Samuel, before the committing of the grievance hereafter next-mentioned, to wit, on, &c. was lawfully poſſeſſed of and in

Vide 7 W. and M. c. 24. ſ. 13. which gives this ſummary mode of proceedings.

2d Count, a larger number of barrels guaged before, of which this was part.

a certain large quantity, to wit, five hundred and ninety-nine barrels and four gallons of a certain exciſeable liquor called ſtrong beer, a great part, to wit, fourteen barrels, one firkin, and one gallon thereof having been theretofore guaged and taken a proper account of by a guager of and belonging to the exciſe of our lord the now king, and the exciſe duty thereon duly ſecured and charged, and not then liable or ſubject to be charged with and to the payment of any further exciſe duty, and the reſidue of the ſaid exciſeable liquor, called ſtrong beer of him the ſaid Samuel, then and there being ſubject and liable to be charged with and to the payment of the duty of exciſe in that caſe provided, to wit, at, &c.; and the ſaid Samuel being ſo poſſeſſed as aforeſaid, afterwards, and whilſt he was ſo poſſeſſed, and before the committing of the grievance hereafter next-mentioned, to wit, on, &c. the ſaid five hundred and ninety-nine barrels and four gallons of ſtrong beer of him the ſaid Samuel, were duly guaged by a guager of and belonging to the ſaid exciſe of our ſaid lord the king, and ſo much thereof as was ſo liable to be charged with and to the payment of the duty of exciſe as aforeſaid, was, by ſuch guager as aforeſaid, duly returned and reported to the commiſſioners and governors duly conſtituted, nominated, and appointed for the receipt and management of the duties of exciſe, ariſing and to ariſe in England, Wales, and Berwick-upon-Tweed, that is to ſay, at the ſaid chief office in London for the duties of exciſe, to the intent that the ſaid Samuel might be charged with the payment of the duty of exciſe thereon payable, to wit, at L. aforeſaid: And the ſaid Samuel in fact ſaith, that the ſaid John, ſo being ſuch officer as aforeſaid, ought, upon the making of ſuch return and report as aforeſaid, to have charged the ſaid Samuel with the payment of the duty of exciſe on only ſo much of the ſaid five hundred and ninety-nine barrels and four gallons of the ſaid exciſeable liquor called ſtrong beer, as had been and was ſo returned and reported as aforeſaid, as being liable and ſubject to be charged with ſuch duty, and not on the whole of the ſaid laſt-mentioned exciſeable liquor called ſtrong beer; yet the ſaid John, ſo being ſuch officer as aforeſaid, and well knowing all and ſingular the premiſes aforeſaid, and not regarding his duty as ſuch officer as aforeſaid, but contriving and maliciouſly intending to injure the ſaid Samuel, and to put him to great expence, did, after the making of ſuch return and report by the guager of the ſaid exciſe of our ſaid lord the king as aforeſaid, and notwithſtanding the ſame, to wit, on, &c. wrongfully and unjuſtly charge the ſaid Samuel with, and call upon him, and did cauſe and procure to be charged with, and to be called upon for the payment of the duty of exciſe on the ſaid laſt-mentioned quantity of the ſaid exciſeable liquor called ſtrong beer, and did thereby then and there overcharge him the ſaid Samuel in reſpect to the duty of exciſe payable by him on the ſaid return and report of the ſaid guager ſo made as aforeſaid, to a large amount, to wit, to the amount of four pounds nineteen ſhillings and a penny three farthings, being the duty on ſo much

of

of the aforeſaid laſt-mentioned quantity of the ſaid exciſeable liquor called ſtrong beer, whereon the ſaid duty of exciſe had been ſo ſecured and charged as aforeſaid; by means whereof he the ſaid S. was afterwards, and before the exhibiting of the bill of him the ſaid S. to wit, on, &c. forced and obliged to, and did exhibit, &c. [ſimilar concluſion to the firſt Count]: And whereas [ſtate plaintiff to be a brewer, defendant a ſurveyor, and that plaintiff being ſuch brewer, and defendant ſuch officer, he plaintiff, on, &c. was poſſeſſed of eleven barrels, one firkin, and two gallons of ſtrong beer, whereon the duty had been charged, and of a large quantity of wort liable to be charged, as in the firſt Count, then proceed thus]; and the ſaid Samuel, being ſuch brewer as aforeſaid, and being ſo poſſeſſed as aforeſaid, afterwards, and whilſt he was ſo poſſeſſed, and before the committing of the grievance hereafter next-mentioned, to wit, on, &c. one W. C. then, and from thence until, and at, and after the committing of the grievance hereafter next mentioned, being an officer of and belonging to the exciſe of our lord the now king, to wit, an officer called a guager, came into the ſaid brewhouſe of the ſaid Samuel, for the purpoſe of guaging and taking an account of the exciſeable liquor then in the poſſeſſion of the ſaid Samuel, and in order to aſcertain how much exciſe duty he the ſaid Samuel was then ſubject and liable to be charged with and to the payment of; and the ſaid W. C. being ſuch officer as aforeſaid, and ſo being in the ſaid brewhouſe of the ſaid Samuel, he the ſaid W. C. did guage as well the ſaid exciſeable liquor called wort, as the ſaid liquor called ſtrong beer, of the ſaid Samuel, ſo being in the ſeveral and reſpective veſſels aforeſaid, and thereby well knew the ſeveral quantities thereof, and that he the ſaid Samuel was not ſubject or liable to be charged with and to the payment of any further exciſe duty on the ſaid liquor called ſtrong beer, than as thereon ſecured and charged as aforeſaid; and thereupon afterwards, and whilſt the ſaid W. C. ſo being ſuch officer as aforeſaid, was in the ſaid brewhouſe of the ſaid S. as aforeſaid, he the ſaid S. being about to let down the ſaid liquor called wort from and out of the ſaid veſſels called backs, into the ſaid veſſel called a working tun, and therein to mix the ſame with the ſaid liquor called ſtrong beer, ſo therein being as aforeſaid, did require the ſaid W. C. ſo being ſuch officer as aforeſaid, to tarry in the ſaid brewhouſe of him the ſaid S. for the purpoſe of ſeeing, and to ſee the ſaid liquor called wort ſo let down and mixed, to the intent that he the ſaid Samuel might not be a ſecond time charged with the payment of the duty of exciſe on the ſaid liquor called ſtrong beer, by reaſon of the ſaid liquor called wort, being let down to and mixed therewith otherwiſe than in the ſight and view of a guager of the ſaid exciſe of our lord the now king, and the ſaid W. C. ſo being ſuch officer as aforeſaid, according to his duty as ſuch officer, ought to have tarried in the ſaid brewhouſe of the ſaid Samuel for the purpoſe aforeſaid, to wit, at L. aforeſaid; yet the ſaid John, well knowing all and ſingular the premiſes aforeſaid, but contriving and maliciouſly intending

3d Count, not tarrying at plaintiff's requeſt to ſee wort, which had been guaged, let down, whereby, &c.

to injure the ſaid Samuel, and to cauſe and procure him to be a ſecond time charged with, and to be called upon for the payment of the duty of exciſe on the ſaid liquor called ſtrong beer, ſo contained in the ſaid veſſel called a working tun, as aforeſaid, by reaſon of the ſaid liquor called wort, being let down and mixed therewith otherwiſe than in the ſight and view of a guager of and belonging to the ſaid exciſe of our lord the king, and alſo to vex, haraſs, and aggrieve him the ſaid Samuel, and to put him to great expence, did then and there, to wit, on, &c. maliciouſly, wrongfully, and unjuſtly cauſe and procure him the ſaid W. C. ſo being ſuch officer as aforeſaid, to refuſe and neglect to tarry in the ſaid brewhouſe of the ſaid Samuel for the purpoſe aforeſaid, and on the contrary thereof, to depart and leave the ſaid brewhouſe of the ſaid Samuel without ſeeing the ſaid liquor, called wort, let down to and mixed with the liquor called ſtrong beer, contrary to the duty of the ſaid office of the ſaid W. C. to wit, at, &c.; whereby he the ſaid Samuel, for the convenient and neceſſary carrying on of his ſaid buſineſs of a brewer, and for the preſervation of the ſaid liquor called wort, and to prevent the ſame from being leſſened in value and ſpoiled, was afterwards, to wit, on, &c. forced and obliged to, and did let down the ſaid liquor called wort, from and out of the ſaid veſſels called backs, into the ſaid veſſel called a working tun, and did therein mix the ſame with the ſaid liquor called ſtrong beer, otherwiſe than in the ſight and view and without the preſence of a guager, or of any other officer of and belonging to the exciſe of our lord the king; by means whereof he the ſaid Samuel was afterwards, to wit, on, &c. a ſecond time charged with and called upon for the payment of the exciſe duty on the ſaid liquor called ſtrong beer, and was thereby overcharged in reſpect to the duty of exciſe † then and there payable and to be paid by him the ſaid Samuel as ſuch brewer as aforeſaid, to a large amount, to wit, to the amount of three pounds ſixteen ſhillings; and thereupon he the ſaid Samuel was afterwards, to wit, on, &c. forced and obliged to, and did exhibit to the commiſſioners and governors duly nominated, conſtituted, and appointed for the receipt and management of the duties of exciſe, ariſing and to ariſe in England, &c. [like concluſion as to the firſt Count]: And whereas, &c. &c. [a general Count like the ſecond Count, only ſtating the overcharge to have been made upon the beer mentioned in the laſt Count]: And whereas, &c. [ſtate plaintiff to be a brewer, and to be poſſeſſed of fifteen barrels, three firkins, and two gallons of beer on which the duty had been charged, &c. and of a large quantity of wort liable to be charged, &c. in the backs, which he intended to let down, &c. as in the firſt Count, then ſtate defendant to be a guager and an officer of and belonging to the exciſe, called a ſurveyor, as in firſt Count, then proceed as follows]; and the ſaid John, being ſuch guager and officer as aforeſaid, and the ſaid Samuel, being ſuch brewer, and poſſeſſed, and intending as aforeſaid, he the ſaid Samuel did afterwards, to wit, on, &c. give notice unto and require the ſaid John, to

4th Count.

5th Count.

being

being ſuch guager and officer as aforeſaid to come in perſon, or to ſend ſome other guager and officer of and belonging to the ſaid exciſe, to the ſaid brewhouſe of the ſaid Samuel, in the evening of the ſaid eighteenth day of March, that is to ſay, at eight o'clock in the evening of the ſame day, for the purpoſe of ſeeing and to ſee the ſaid liquor, called wort, let down from and out of the ſaid veſſels called backs, into the ſaid veſſel called a working tun, and therein mixed with the ſaid liquor called ſtrong beer, to the intent that he the ſaid Samuel might not be a ſecond time charged with and to the payment of the duty of exciſe on the ſaid liquor called ſtrong beer, by reaſon of the ſaid liquor called wort, being let down to and mixed therewith as aforeſaid, otherwiſe than in the ſight and view of a guager and officer of and belonging to the exciſe of our lord the king, to wit, at L. aforeſaid: And the ſaid Samuel in fact further ſaith, that the ſaid John, ſo being ſuch guager and officer as aforeſaid, according to his duty as ſuch officer and guager as aforeſaid, ought to have come in perſon, or ought to have ſent ſome other guager and officer of the exciſe to the ſaid brewhouſe of the ſaid Samuel, at the time and for the purpoſe in the ſaid notice ſpecified, according to the tenor and effect of the ſaid notice, to wit, at L. aforeſaid; yet the ſaid John, ſo being ſuch guager and officer as aforeſaid, not regarding his duty as ſuch guager and officer, but neglecting the ſame, and contriving and maliciouſly intending, wrongfully and unjuſtly to injure, prejudice, and damnify the ſaid Samuel, and to render him ſubject and liable to be a ſecond time charged with the payment of the duty of exciſe on the ſaid liquor called ſtrong beer, and alſo to vex, haraſs, and aggrieve him, and to put him to great expence, did not, at eight o'clock in the evening, or at any hour or other time in the evening of the ſaid eighteenth day of March, in the year aforeſaid, come in perſon, nor did the ſaid John ſend any other guager and officer of the exciſe of our lord the now king, to the ſaid brewhouſe of the ſaid Samuel, for the purpoſe whereof he the ſaid John had ſo had notice as aforeſaid, but therein wholly failed and made default, and neglected ſo to do, ‖ to wit, at L. aforeſaid; whereby the ſaid Samuel, for the convenient, &c. &c. [as the concluſion to the third Count till you come to this mark †, then proceed thus]; to be paid by him the ſaid Samuel as aforeſaid, to a large amount, to wit, to the amount of five pounds nine ſhillings and ſixpence, and was thereupon afterwards, and before the day of exhibiting the bill of the ſaid Samuel, to wit, on, &c. in order to be relieved of and from the payment of the ſaid laſt-mentioned duty of exciſe, forced and obliged to exhibit, and did exhibit, &c. [like the concluſion to the firſt Count, only ſtating complaint to have been heard on the twenty-eighth of April]: And whereas, &c. [as in the laſt Count till you come to this mark ‖, only ſtating the quantity of the wort to be two hundred barrels, then go on thus]; contrary to the duty of him the ſaid John as ſuch guager and officer as aforeſaid; by means whereof the ſaid Samuel could not, at the time when the ſaid wort ought to have been let down from and out 6th Count.

out of the ſaid veſſels called backs, into the ſaid veſſel called a working tun, to wit, at eight o'clock in the evening of the eighteenth of March, nor until a long time, to wit, until two hours afterwards, when a certain other guager of and belonging to the exciſe of our lord the king, came into the brewhouſe of him the ſaid Samuel, and let down the ſaid liquor called wort, from and out of the ſaid veſſels called backs, into the ſaid veſſel called a working tun, for the purpoſe aforeſaid, without ſubjecting and rendering himſelf liable to be a ſecond time charged with the payment of the duty of exciſe on the aforeſaid liquor called ſtrong beer, by reaſon of the ſaid before-mentioned wort being let down to and mixed therewith otherwiſe than in the ſight and view, and without the preſence of a guager of and belonging to the ſaid exciſe of our ſaid lord the king; by means whereof he the ſaid Samuel was greatly retarded, hindered, prevented, and obſtructed in carrying on of his ſaid buſineſs of a brewer, and the ſaid liquor, called wort, was, by means of the ſeveral premiſes aforeſaid, greatly damaged, injured, and damnified, to wit, at L. aforeſaid: And whereas, &c. [add a general Count upon the overcharge in the 5th Count, in like manner as in the 2d Count]: And whereas, &c. [there was an 8th ſpecial Count for conſequential damages upon an overcharge on twelve barrels, three firkins, and one gallon on the fourteenth of May 1779, occaſioned in like manner as mentioned in 5th Count]: And whereas, &c. [a general Count as 2d Count, upon the overcharge in the laſt Count.] Damages five hundred pounds. Suit, &c. Pledges, &c. T. DAVENPORT.

4th Count.

8th Count.

9th Count.

This declaration was drawn by Mr. Lawes; the four firſt Counts of it were ſettled by Mr. Serjeant Walker, and the whole approved by Sir T. Davenport. The caſe was tried at the ſittings after Hilary Term, 20. Geo. 3. and verdict for plaintiff, 50l damages. It was contended by the counſel for the defendant, that the overcharges were juſtifiable upon the ground of the plaintiff's refuſal to declare the length of his guiles in the manner required by the defendant, which he ſaid was warranted by the ſeveral ſtatutes relative to that point, but Lord M. was of opinion that the propriety or impropriety of the charges could not be a ſecond time gone into.

Declaration againſt a juſtice of the peace, for maliciouſly committing plaintiff for having ſworn ſo profane an oath, without hearing the plaintiff or his witneſſes in his defence, whereby the defendant fined the plaintiff 10l. and for his refuſing to pay the money, ſent him to priſon to hard labour.

SABATIER *againſt* COWARD. } SOMERSETSHIRE, to wit. For that whereas the ſaid T. C. at the ſeveral and reſpective times of committing the ſeveral and reſpective wrongs and grievances hereinafter mentioned, was, and for divers years laſt paſt has been, and ſtill is, one of his majeſty's juſtices of the peace in and for the ſaid county of S. that is to ſay, at, &c. in, &c.; and whereas alſo the ſaid R. S. on, &c. in the twenty-eighth year of the reign of our lord the now king, and A. D. 1780, at, &c. in, &c. did perſonally appear before the ſaid T. C. then and ſtill being ſuch juſtice of the peace as aforeſaid, according to an appointment before that time made by the ſaid T. C. in this behalf, in order to make his defence againſt a certain charge pretended by

the ſaid T. C. to have been made before him as ſuch juſtice of the peace aforeſaid, againſt him the ſaid R. S. (1) *of profanely ſwearing and curſing two hundred profane oaths and curſes, upon the information of one A. B. of, &c. in, &c. clerk, made unto him the ſaid T. C. as ſuch juſtice of the peace as aforeſaid, on, &c. A. D.* 1780, *who upon his oath informed and ſaid, that on Saturday then laſt, the twenty-third day of that inſtant, Monday the twenty-fifth, and Tueſday the twenty-ſixth days of that inſtant September, he heard the ſaid R. S.* profanely ſwear and curſe two hundred profane oaths and curſes at and about his houſe in S. aforeſaid, in theſe or the like words, viz. "God damn me eternally, God damn me if I do not, and God damn me if I am not a match for them:" And the ſaid R. S. in fact ſays, that he the ſaid R. S. was then and there, to wit, on, &c. at, &c. in, &c. ready to make his defence againſt the ſaid pretended charge before him the ſaid T. C. being ſuch juſtice of the peace as aforeſaid, and certain perſons, namely, W. C. &c. did then and there appear before the ſaid T. C. then and there being ſuch juſtice of the peace as aforeſaid, as witneſſes for and on the behalf of him the ſaid R. S. upon account of the ſaid pretended charge, and the ſaid T. C. was then and there requeſted by the ſaid R. S. to hear *the defence of him the ſaid R. S. againſt the ſaid pretended charge, and to hear* the evidence of the ſaid ſeveral perſons then and there appearing as witneſſes in that behalf as aforeſaid; yet the ſaid T. C. not regarding the laws of this kingdom and his duty of juſtice of the peace as aforeſaid, but wickedly and maliciouſly intending to oppreſs and injure the ſaid R. S. then and there wholly refuſed to hear the (2) *defence of him the ſaid R. S. againſt the ſaid pretended charge, and to hear the evidence of his ſaid witneſſes then and there in that behalf, and did not hear the defence of him the ſaid R. S. againſt the ſaid pretended charge, nor the evidence of the ſaid ſeveral perſons then and there appearing as witneſſes in that behalf as aforeſaid, or either of them,* but on the contrary thereof he the ſaid T. C. ſo being ſuch juſtice of the peace as aforeſaid, further wickedly and maliciouſly intending to oppreſs and injure the ſaid R. S. to wit, on, &c. at, &c. in, &c. did unlawfully, wickedly, and maliciouſly convict the ſaid R. S. of the ſaid pretended charge *in the information of the ſaid A. B. hereinbefore mentioned,* without having heard *the defence of him the ſaid R. S. againſt the ſaid pretended charge, or having heard* the evidence of the ſaid ſeveral perſons appearing as witneſſes in that behalf as aforeſaid, or of either of them; and the ſaid T. C. in purſuance of the ſaid conviction, and further intending wickedly and maliciouſly to oppreſs and injure the ſaid R. S. to wit, on, &c. at, &c. in, &c. made his certain warrant, ſealed with his ſeal, and directed to the conſtable of S. in the ſaid county and to the keeper of the houſe of correction of S. in the ſaid county, by which ſaid warrant reciting, "That whereas R. S. of, &c. in, &c. was and ſtood convicted that day before him the ſaid T. C. eſquire, one of his majeſty's juſtices of the peace for the ſaid county of ſwearing and curſing two hundred profane oaths and curſes

(1) "on, &c. that on, &c. &c. of that inſtant September, he the ſaid R. S. did"

(2) "evidence of the ſaid ſeveral perſons appearing as witneſſes in the defence of the ſaid R. S. againſt the ſaid laſt-mentioned pretended charge, or either of them, and did not hear the evidence of the ſame ſeveral perſons or either of them, in the defence of the R. S. againſt the ſaid laſt-mentioned pretended charge,"

curſes on, &c. at and within the town and pariſh of S. in the ſaid county, whereby he had forfeited the ſum of ten pounds to the poor of the pariſh of S.; and whereas the ſaid R. S. had refuſed, and did refuſe to pay down the ſaid ſum of ten pounds for the uſe of the poor of the ſaid pariſh, and alſo had refuſed and did refuſe to give ſatisfactory ſecurity to pay the ſame, the ſaid T. C. eſquire, did require him the ſaid conſtable to convey the ſaid R. S. to the houſe of correction at S. aforeſaid, and to deliver him to the keeper thereof, together with that warrant;" and the ſaid T. C. by the ſaid warrant did command him the ſaid keeper to receive him the ſaid R. S. into his cuſtody in the ſaid houſe of correction, and there to detain and keep him to hard labour for the ſpace of ten days; by reaſon of which premiſes the ſaid R. S. was unlawfully impriſoned, and kept and detained in priſon for a long ſpace of time, to wit, for the ſpace of ten days, and during all that time was prevented and hindered from following and tranſacting his lawful affairs and buſineſs, and was obliged to undergo and ſuffer, and did, during all that time, undergo and ſuffer great pain and uneaſineſs both of body and mind, and was obliged to lay out and expend, and did lay out and expend a large ſum of money in and about the maintaining himſelf during that time, to wit, the ſum of twenty pounds, and in the freeing and diſcharging himſelf from the ſaid priſon, that is to ſay, at, &c. in, &c.: And whereas, &c. &c. [this Count ſame as the firſt, only omitting what is in Italic and inſerting in lieu thereof what is in the margin]: And whereas alſo at the ſeveral and reſpective times of committing the ſeveral and reſpective wrongs and grievances hereinafter mentioned, was, &c.; and whereas alſo the ſaid R. S. on, &c. at, &c. did perſonally, &c. in order to make his defence againſt, &c. pretended, &c. againſt the ſaid R. S. of ſwearing and curſing two hundred profane oaths and curſes; And the ſaid R. S. in fact further ſaith, that he the ſaid R. S. was then and there, to wit, on, &c. ready to make his defence againſt the ſaid laſt-mentioned pretended charge, before him the ſaid T. C. being ſuch juſtice of the peace as aforeſaid, and certain other perſons, namely, W. C. &c. &c. did then and there appear before the ſaid T. C. then and there being ſuch juſtice of the peace as laſt aforeſaid, as witneſſes for and on the behalf of him the ſaid R. S. upon account of the ſaid laſt-mentioned pretended charge: and the ſaid T. C. was then and there requeſted by the ſaid R. S. to hear the defence of him the ſaid R. S. againſt the ſaid laſt-mentioned pretended charge, and to hear the evidence of his the ſaid R. S.'s ſaid witneſſes on that behalf; yet the ſaid T. C. not regarding the laws of, &c. nor his duty of, &c. but further wickedly, &c. the ſaid R. S. then and there refuſed to hear the defence of him the ſaid R. S. againſt the ſaid laſt-mentioned pretended [illegible] and to hear the evidence of his ſaid witneſſes, or either of [illegible] in that behalf, but on the contrary thereof, he the ſaid T. C. [illegible] ſuch juſtice of the peace as aforeſaid, further wickedly, &c. the ſaid R. S. to wit, on, &c. did unlawfully, &c. convict the [illegible] ſaid.

ed Count.

ed Count, refuſing to hear witneſſes produced.

ſaid R. S. of the ſaid laſt-mentioned pretended charge, without having heard his defence againſt the ſame charge, or having heard the evidence of his ſaid witneſſes, or either of them in that behalf; and that the ſaid T. C. in purſuance of the ſaid laſt-mentioned conviction, and further intending wickedly and maliciouſly to oppreſs and injure the ſaid R. S. to wit, on, &c. at, &c. in, &c. made his certain other warrant in writing, ſealed with his ſeal, and directed to, &c. by which ſaid laſt-mentioned warrant reciting, "That whereas, &c." [ſet out the warrant as before, and finiſh this Count ſame as the laſt]: And whereas alſo the ſaid T. C. at the ſeveral and reſpective times of the committing of, &c. was, &c. in and for the ſaid county of S. that is to ſay, at, &c. in, &c.; and the ſaid T. C. being ſuch juſtice of the peace as laſt aforeſaid, on, &c. at, &c. in, &c. did unlawfully, and contrary to his duty as ſuch juſtice of the peace, convict the ſaid R. S. of a certain ſuppoſed offence of ſwearing and curſing two hundred profane oaths and curſes; and the ſaid T. C. then and there, to wit, on, &c. at, &c. under colour of his office of juſtice of the peace as aforeſaid, unlawfully did adjudge that the ſaid R. S. had forfeited for the ſaid ſuppoſed offence the ſum of ten pounds to the poor of the ſaid pariſh of S. without having heard any defence of him the ſaid R. Sabatier in that behalf, although he the ſaid R. Sabatier, before he was ſo convicted as aforeſaid, to wit, on, &c. at, &c. was ready to make his defence therein by certain perſons, namely, W. C. &c. witneſſes for him the ſaid R. S. in that behalf, and did then and there offer to the ſaid T. C. to make his defence therein before him the ſaid T. C. being ſuch juſtice of the peace as laſt aforeſaid, by his ſaid witneſſes, but the ſaid T. C. then and there being ſuch juſtice of the peace as laſt aforeſaid, then and there refuſed to permit or ſuffer, and did not permit or ſuffer the ſaid R. S. to make his defence therein; and the ſaid R. S. further ſays, that the ſaid T. C. being ſuch juſtice of the peace as laſt aforeſaid, on, &c. at, &c. in, &c. in conſequence of the ſaid laſt-mentioned conviction, did cauſe and procure the ſaid R. S. to be unjuſtly impriſoned and detained in priſon for a long ſpace of time, to wit, for the ſpace of other ten days, by reaſon whereof the ſaid R. S. during all that time was prevented and hindered from following, &c. [finiſh this Count as before]: And whereas alſo the ſaid T. C. at the time of, &c. was, &c. that is to ſay, at, &c. in, &c.; and the ſaid T. C. being ſuch juſtice of the peace as aforeſaid, he the ſaid T. C. further wickedly and maliciouſly intending to oppreſs and injure the ſaid R. S. to wit, on, &c. at, &c. in, &c. did, contrary to the laws of this kingdom, and to his duty as ſuch juſtice of the peace as laſt aforeſaid, *unlawfully*, wickedly, and maliciouſly convict the ſaid R. S. of a certain other ſuppoſed offence in ſwearing and curſing two hundred profane oaths and curſes, (3) *although the ſaid R. S. before he was ſo convicted as laſt aforeſaid, to wit, on, &c. at, &c. was ready, and did then and there offer to the ſaid T. C. being ſuch juſtice of the peace as laſt aforeſaid, to make his defence therein,*

4th Count, convicting without evidence.

5th Count.

(3) "without hearing the ſaid R. S. in his"

therein, but the ſaid T. C. then and there unlawfully, wickedly, and maliciouſly refuſed to permit or ſuffer, and did not permit or ſuffer the ſaid R. S. to make his defence therein, that is to ſay, at, &c. in, &c.: And whereas, &c. [this count ſame as the fifth, only leaving out what is in Italic, and inſerting in lieu thereof what is in margin]: And whereas alſo at the time of the committing of the wrong and injury hereinafter mentioned the ſaid T. C. was, and for divers years laſt paſt had been and ſtill is one of his majeſty's juſtices of the peace in and for the ſaid county of S. and the ſaid T. C. being ſuch juſtice as laſt aforeſaid, further wickedly and maliciouſly intending to oppreſs and injure the ſaid R. S. to wit, on, &c. at, &c. in, &c. did contrary to the laws of, &c. and to his duty of, &c. wickedly and maliciouſly convict the ſaid R. S. of a certain other ſuppoſed offence in ſwearing and curſing two hundred profane oaths and curſes, he the ſaid T. C. not having as juſtice of the peace as laſt aforeſaid any legal authority whatſoever ſo to do, that is to ſay, at, &c. by reaſon of which premiſes in the three laſt counts ſpecified, he the ſaid R. S. hath been greatly injured, and hath been impriſoned and kept in priſon for another long ſpace of time, to wit, for the ſpace of other ten days and during all that time was prevented and hindered from following, &c. &c. Damage five hundred pounds.

5th Count.

5th Count, concluding, not having legal authority.

Declaration againſt the mayor of a borough for not returning plaintiff when duly elected to ſerve as a member in parliament for the borough, but returning other candidates, ſtating the proceedings of the ſelect committee and the houſe of commons in declaring plaintiff duly elected, &c. &c.

DORSETSHIRE, to wit. H. W. Mortimer complains of Charles Pinhorn, being, &c.; for that whereas on, &c. in the twentieth year of the reign of our ſovereign lord the now king, a certain writ of our ſovereign lord the now king, iſſued out of his majeſty's court of chancery (the ſame court then being at Weſtminſter in the county of Middleſex,) directed to the then ſheriff of his majeſty's county of Dorſet, by which ſaid writ, reciting, that whereas, &c. &c. [recite the writ] remitting to his ſaid majeſty one part of the aforeſaid indentures annexed to the ſaid writ with the ſaid writ, which ſaid writ afterwards and before the return thereof, to wit, on, &c. in the twentieth year aforeſaid, at the borough of S. in the ſaid county of D. was delivered to P. B. eſquire, he the ſaid P. B. then and continually from thenceforth, until, and after the return of the ſaid writ, being ſheriff of the ſaid county of D. to be executed in due form of law; by virtue of which ſaid writ, he the ſaid P. B. ſheriff as aforeſaid, afterwards and before the return thereof, to wit, on, &c. in the twentieth year aforeſaid, at, &c. in, &c. made his certain precept in writing, ſealed with the ſeal of his ſaid office of ſheriff of the ſaid county of D. and bearing date the ſame day and year laſt aforeſaid, and directed to the mayor of the ſaid borough of S. in the ſaid county of D. of and for the election within the ſaid borough of two burgeſſes of the ſame borough, according to the form and effect of the ſaid writ, by which ſaid precept the ſaid ſheriff willed and required the ſaid mayor, that proclamation being firſt duly made throughout the ſaid borough, he ſhould cauſe to be elected, according to the form of the ſtatute in that caſe made and provid[ed],

provided, two burgeſſes of the moſt ſufficient and diſcreet of the ſaid borough, whether they ſhould be preſent or abſent, and the names of ſuch two burgeſſes ſo elected he ſhould cauſe to be inſerted in certain indentures to be thereupon made between the ſaid ſheriff and them who ſhould be preſent at ſuch election, and the ſaid burgeſſes at the day and place in the ſaid writ named, the ſaid mayor ſhould cauſe to come in ſuch manner that the ſaid burgeſſes might have from them full and ſufficient power for themſelves and the commonalty of the ſaid borough to do and conſent to thoſe things which then and there by the common council of his majeſty's ſaid kingdom by the bleſſing of God ſhould happen to be ordained upon the affairs in the ſaid writ ſpecified, ſo that for want of ſuch power or through an improvident election of the ſaid burgeſſes, the aforeſaid affairs might in no wiſe remain unfiniſhed; and that the ſaid mayor ſhould certify to the ſaid ſheriff the ſaid election ſo as aforeſaid to be made under the ſeal of the ſaid mayor and the ſeals of thoſe who ſhould be preſent at ſuch election without delay, together with that precept and the indentures annexed, which ſaid precept afterwards and before the return of the ſaid writ, to wit, on, &c. in the twentieth year aforeſaid, at, &c. in, &c. was delivered to the ſaid defendant, he the ſaid defendant then and continually from thenceforth, until, and at, and after the election of two burgeſſes to ſerve as burgeſſes for the ſaid borough in the ſaid parliament to be holden as aforeſaid, being mayor of the ſaid borough of S. in the county of D. aforeſaid, and to whom the execution of that precept of right belonged to be executed in due form of law, to wit, at, &c. by virtue of which ſaid precept, afterwards and before the return of the ſaid writ, to wit, on, &c. in the twentieth year aforeſaid, at, &c. the election of two burgeſſes of the ſaid borough, to ſerve as burgeſſes for the ſaid borough at the then next parliament to be holden as aforeſaid, was had and made, at which ſaid election and before and until the ſaid election, the ſaid H. W. M. eſquire, and one ſir G. L. baronet, and one ſir F. S. and one ſir T. B. were and ſtood candidates, that of them two might be elected to ſerve as burgeſſes for the ſaid borough of S. in the ſaid then next parliament; and thereupon the ſaid plaintiff at the ſaid election was duly elected to ſerve as one of the burgeſſes for the ſaid borough in the ſaid then next parliament to be holden as aforeſaid by the perſons then and there preſent, and having a right to make ſuch election as aforeſaid; whereof the ſaid plaintiff, on, &c. at, &c. in, &c. had notice ‡; yet the ſaid defendant ſo being mayor of the ſaid borough as aforeſaid, and the returning officer at the ſaid election well knowing the premiſes but not regarding the duty of his office in this behalf, nor the ſtatute in ſuch caſe made and provided in any wiſe fearing, but wilfully, maliciouſly, fraudulently, and injuriouſly intending the ſaid plaintiff in this behalf unjuſtly to hinder, vex, and oppreſs, and to hinder him from his ſaid place in the ſaid parliament of our ſaid lord the king, and to put

* Of candidates to ſerve in parliament.

him

him to great expence, did not certify and return the ſaid plaintiff to be elected to ſerve as a burgeſs for the ſaid borough of S. in the ſaid then next parliament to be holden as aforeſaid, but the ſaid defendant voluntarily, wilfully, obſtinately, and maliciouſly, neglected and refuſed ſo to do, to wit, at, &c. in, &c. And the ſaid defendant ſo being mayor and returning officer as aforeſaid, after the ſaid election, that is to ſay, on, &c. in the twentieth year aforeſaid, wilfully, maliciouſly, and injuriouſly, contrary to the duty of his ſaid office, and contrary to the ſaid ſtatute, cauſed and procured a certain indenture to be made between the ſaid P. B. eſquire, high ſheriff of the county D. aforeſaid of the one part, and him the ſaid defendant by the name and deſcription of C. P. gentleman, mayor of the borough of S. in the ſaid county of D. and other the inhabitants paying ſcot and lot there of the other part, and ſealed and cauſed to be ſealed one part of the ſaid indenture with the ſeal of the ſaid C. P. and with the ſeals of other the inhabitants of the ſaid borough, in which ſaid indenture it was falſely, maliciouſly, and injuriouſly contained and alledged, that the ſaid mayor and inhabitants, according to the tenor of his ſaid majeſty's writ, and the ſaid ſheriff's precept thereon to the ſaid mayor directed for the election of two burgeſſes to ſerve in parliament during the then next ſeſſions of parliament for the ſaid borough, had elected, nominated, and choſen ſir T. R. baronet, and ſir F. S. baronet, to be burgeſſes of the ſaid borough in the ſaid then next ſeſſions of parliament thereby giving them full power for and in behalf of the ſaid borough, to do, execute, and conſent to all ſuch things as ſhould there by authority of the ſaid parliament be ordained and enacted, and afterwards, to wit, on, &c. in the twentieth year aforeſaid, at, &c. he the ſaid defendant wilfully, falſely, maliciouſly, and injuriouſly, contrary to the duty of his ſaid office of mayor of the ſaid borough, and contrary to the ſtatute in that caſe made and provided, did certify and return the ſaid indenture to the ſaid P. B. eſquire, being the ſheriff of the ſaid county of D. in order that the ſaid indenture might be returned and certified, and remitted by the ſaid ſheriff to the ſaid lord the king in his chancery, and which ſaid return afterwards, to wit, on, &c. in the twentieth year of the reign of the lord the now king, was accordingly certified and remitted to our ſaid lord the king in his chancery, the ſaid chancery then and yet being at W. in the ſaid county of M. in contempt of our ſaid lord the king and to the great damage of the ſaid plaintiff, and alſo againſt the form of the ſtatute in ſuch caſe made and provided; whereas in truth and in fact the ſaid ſir T. R. was not duly elected at the ſaid election to ſerve as one of the burgeſſes of the ſaid borough of S. in the ſaid parliament to be holden as aforeſaid; and whereas in truth and in fact the ſaid plaintiff was duly [illegible] and ought to have been returned to ſerve as one of the [illegible] for the ſaid borough of S. in the ſaid parliament to be [illegible] as aforeſaid; and the ſaid plaintiff further ſays, that after [illegible] to wit, on, &c. in the twenty-firſt year of the reign of [illegible] &c.

&c. a petition of the ſaid ſir G. C. and plaintiff was preſented to the commons of Great Britain in parliament aſſembled, complaining of the ſaid election and return being an undue election and return of burgeſſes for the ſaid borough to ſerve in the ſaid parliament; and that the petition of the ſaid ſir G. C. and plaintiff was ordered and appointed by the ſaid commons of Great Britain in parliament aſſembled to be taken into conſideration, on, &c. and the ſaid petition was accordingly taken into conſideration at the time appointed in that behalf, and that a ſelect committee of the ſaid commons was then elected and nominated, according to the form of the ſtatute in ſuch caſe made and provided, to try and determine the merits of the ſaid petition; and the ſaid ſelect committee determined that the ſaid ſir T. R. was not duly elected a burgeſs to ſerve in the ſaid parliament to be holden as aforeſaid for the ſaid borough of S. and alſo that the ſaid plaintiff ought to have been returned a burgeſs to ſerve in the ſaid parliament for the ſaid borough of S. and that the ſaid plaintiff was duly elected a burgeſs to ſerve in the ſaid parliament for the ſaid borough of S. and the ſaid plaintiff further ſaith, that the chairman of the ſaid ſelect committee afterwards, to wit, on, &c. in the twenty-firſt year of the reign of, &c. informed the houſe of the ſaid commons of Great Britain in parliament aſſembled of the ſaid determination of the ſaid ſelect committee, and thereupon it was then and there ordered by the commons of Great Britain that the ſaid determination of the ſaid ſelect committee ſhould be entered in the journals of the ſaid houſe of commons; and it was alſo then and there ordered by the ſaid commons in parliament aſſembled, that the deputy clerk of the crown ſhould attend the ſaid houſe of commons, on, &c. with the ſaid return for the ſaid borough of S. and ſhould amend the ſame by razing out the name of the ſaid ſir T. R. and inſerting the name of the ſaid plaintiff inſtead thereof; and the deputy clerk of the crown then, to wit, on, &c. at, &c. attending according to order with the ſaid return for the ſaid borough of S. then and there amended the ſaid return by razing out the name of the ſaid ſir T. R. and inſerting the name of the ſaid plaintiff thereof, that is to ſay, at W. aforeſaid; by reaſon of which ſaid premiſes he was hindered from taking his ſeat in the ſaid parliament for a long time, to wit, for the ſpace of five months, and was obliged to lay out and expend, and did lay out and expend a large ſum of money, to wit, the ſum of five thouſand pounds in order to have and obtain his ſeat in the ſaid parliament, to wit, at the borough of S. aforeſaid in the county of D. aforeſaid; and whereas, on, &c. [as in the firſt Count till you come to this mark ‡, then proceed as follows]: Yet the ſaid defendant ſo being mayor of the ſaid borough and returning officer at the ſaid election, well knowing the premiſes but not regarding the duty of his office in this behalf nor the ſtatute in ſuch caſe made and provided, and contriving and maliciouſly intending unjuſtly to injure the ſaid plaintiff in this behalf and him the ſaid plaintiff in this unjuſtly to aggrieve and wholly to deprive him of his ſeat in the ſaid then next parliament of his preſent majeſty, and to put him to great charges and expences,

did not certify, declare, or return the ſaid plaintiff to be elected as one of the burgeſſes for the ſaid borough in the ſaid parliament to be holden as aforeſaid, but the ſaid defendant wilfully, maliciouſly, and injuriouſly neglected and refuſed ſo to do, and then and there falſely, wrongfully, maliciouſly, and injuriouſly returned the ſaid precept to the ſaid P. B. eſquire, then being ſheriff of the ſaid county of D. as aforeſaid, that the ſaid ſir T. R. and ſir F. S. had been duly elected to ſerve as burgeſſes in the preſent parliament for the borough aforeſaid, to wit, at the borough aforeſaid, in order that the ſame might be certified and returned by the ſaid ſheriff to our ſaid lord the king in his chancery according to the ſaid writ, to wit, at W. aforeſaid, to wit, at the borough of S. aforeſaid, in the county of D. aforeſaid, to the great damage of the ſaid plaintiff; by reaſon of which ſaid laſt mentioned premiſes the ſaid plaintiff was hindered from taking his ſeat in the then next parliament for a long time, to wit, for the ſpace of five months, and until the ſaid commons had determined that at the ſaid election the ſaid plaintiff had been duly elected to ſerve in parliament for the ſaid borough; and the ſaid plaintiff was obliged to expend and lay out, and did lay out and expend a large ſum of money, to wit, the ſum of five thouſand pounds in order to have and obtain his ſeat in the ſaid then next parliament, to wit, at the borough of S. aforeſaid in the county of D. aforeſaid; whereupon the ſaid plaintiff ſaith that he is injured and hath ſuſtained damage to the value of ten thouſand pounds; and therefore he brings his ſuit.

W. BALDWIN.

Declaration againſt a marſhalſea court officer for an eſcape and falſe return of his writ of *capias*.

MIDDLESEX, to wit. Griffith Evans complains of Simon Place, being, &c. of a plea of treſpaſs on the caſe; for that whereas he the ſaid plaintiff heretofore, to wit, on the day of in the year of the reign of our ſovereign lord George the Third, now king of Great Britain, &c. came into the court of our ſaid lord the king of his ſaid majeſty's palace of Weſtminſter then held at Southwark, in the county of Surry, within the juriſdiction of ſaid court before *William, earl Talbot*, then ſteward of the king's houſehold, *ſir Philip Meadows, knight*, then marſhal of ſaid houſehold, and *Danby Pickering, eſquire*, then ſteward of ſaid court, judges of the court aforeſaid, by virtue of the letters patent of Charles the Second, late king of England, &c. bearing date at Weſtminſter the fourteenth day of October, in the ſixteenth year of his reign, according to the cuſtom of ſaid court from time immemorial uſed and approved of in the ſaid court, and levied his certain plaint againſt one John Piner at the ſuit of him the ſaid plaintiff in a certain plea of treſpaſs on the caſe, to the damage of ſaid plaintiff of ninety-nine ſhillings for a cauſe of action ariſing to ſaid plaintiff againſt ſaid defendant within the juriſdiction of that court, and then and there found pledges to proſecute his ſaid plaint, to wit, John Doe and Richard Roe, and ſuch proceedings were thereupon had in the ſame court of the king's palace aforeſaid, in the ſaid plea of the ſaid plaint, that afterwards, to

writ, at the court of the king's palace aforesaid, held at Southwark aforesaid, in the county of Surry, within the jurisdiction of said court on Friday the day of, &c. in year of our lord the now king, before the aforesaid judges of the said court, there issued out of the said court at the prayer of said plaintiff, a certain writ of our said lord the now king called a *capias* at the suit of said plaintiff against said John Piner directed to the bearers of the virges of his said majesty's household, the officers and ministers of the said court of the king's palace of Westminster, and every of them, by which said writ our said lord the now king commanded them and every of them that they or one of them should take said I. P. if he should be found within the jurisdiction of the said court and him safely keep, so that they or one of them might have his body before the judges of the said court at the then next court of the king's palace of Westminster aforesaid, on Friday the day of, &c. then next following, to be holden at Southwark aforesaid, in the county of Surry, to answer to said plaintiff of said plea of trespass on the case of said plaintiff his damage of ninety-nine shillings, and that they or one of them should have there then that writ, which said writ aforesaid and before the delivery thereof to be executed as is herein after mentioned was duly marked for bail for pounds, according to the form of the statute in such case made and provided, which said writ, afterwards and before the return thereof, to wit, on, &c. in the year aforesaid, to wit, at W. aforesaid in said county of Middlesex, was delivered to said defendant (he the said defendant then and until and after the return of the said writ being one of the bearers of the virges of his said majesty's household and an officer and minister of said court of his said majesty's palace,) to be executed in due form of law; and said plaintiff further saith that afterwards and before the return of said writ, to wit, on said day of in the year aforesaid, within the jurisdiction of that court, that is to say, at Westminster aforesaid, said I. P. was in the presence of said defendant, he the said defendant so being one of the bearers of the virges of his said majesty's household and an officer and minister of said court of his said majesty's palace; and the said plaintiff then and there shewed and caused to be shewn to said defendant said I. P. and the said defenddant was then and there requested to take and arrest the said I. P. by his body according to the tenor of the said writ; yet said defendant so being one of the bearers of the virges of his said majesty's household, and an officer and minister of the said court of his majesty's palace, not regarding the duty of his said office, but contriving and maliciously intending, wrongfully and unjustly to injure and prejudice said plaintiff, and to deprive him of the means of the recovery of his aforesaid damage afterwards, to wit, on the same day and year last aforesaid, to wit, at W. aforesaid, voluntarily suffered and permitted said I. P. to escape and go at large without arresting or taking of him by his body by virtue of his said writ, although he said defendant might easily have taken and arrested said I. P. by his body by virtue of said writ, he the said

ſaid plaintiff being then and ſtill wholly unſatisfied his ſaid damages, and at the return of ſaid writ neglected to have, nor had he the body of the ſaid I. P. before the judges of ſaid court at the return of ſaid writ as he the ſaid defendant was by the ſaid writ commanded; but on the contrary thereof he the ſaid defendant, ſo being one of the bearers of the virges of his ſaid majeſty's houſehold, and an officer and miniſter of ſaid court of his ſaid majeſty's palace, falſely and deceitfully returned upon the ſaid writ to ſaid court of his ſaid majeſty's ſaid palace of Weſtminſter, held at Southwark in the county of Surry, that the ſaid I. P. was not found within the juriſdiction of ſaid court, by means of which ſaid premiſes, ſaid plaintiff is greatly hurt, prejudiced, and damnified, and greatly retarded from the recovery of his aforeſaid damages, and very likely wholly to loſe the ſame, to the damage of ſaid plaintiff of twenty pounds, for which he brings his ſuit, &c. Pledges, &c.

I. MORGAN.

Declaration againſt the marſhal of the marſhalſea for ſuffering a priſoner to eſcape, who was originally in priſon at ſuit of another, but detained at plaintiff's ſuit.

MIDDLESEX, to wit. Jonathan Widmer complains of Richard Mullins, eſquire, marſhal of the Marſhalſea of our lord the now king, before the king himſelf, preſent here in court the ſame day in a plea of treſpaſs on the caſe; for that whereas, &c. &c. [ſet forth the original cauſe of action,] the ſaid ſeveral ſums of money being wholly unpaid to ſaid plaintiff, and ſaid promiſe and undertaking of ſaid S. being wholly unperformed to ſaid plaintiff for the recovery of his damages by him ſuſtained on occaſion of the non-payment of ſaid ſeveral ſums of money ſo due and owing to him as aforeſaid, and of the not performing of ſaid promiſe and undertaking, afterwards, to wit, in term in the year of the reign of our lord the now king, (he the ſaid I. S. then being a priſoner for debt in the cuſtody of the marſhal of the marſhalſea of our lord the now king, before the king himſelf, being thereunto before then duly committed by virtue of proceſs, iſſuing out of this court here,) came before our lord the king at Weſtminſter by T. S. his then attorney, and then and there according to the cuſtom of ſaid court of our ſaid lord the king, before the king himſelf, here exhibited his bill againſt ſaid S. ſo then being in the cuſtody of the ſaid then marſhal of the marſhalſea of our ſaid lord the king, before the king himſelf, in a plea of treſpaſs on the caſe, &c. and then and there found pledges to proſecute his ſaid writ, to wit, John Doe and Richard Roe, and by ſaid bill he the ſaid plaintiff then and there complained againſt the ſaid S. ſo being in the cuſtody of the ſaid then marſhal of the marſhalſea of our lord the king, before the king himſelf; for that whereas, &c. &c. [ſet forth the original declaration, verbatim, omitting the pledges], and afterwards, to wit, on the day of A. D. at Weſtminſter aforeſaid, *perſonally ſerved* ſaid S. ſo then being a priſoner for debt in the actual cuſtody of ſaid defendant then and ſtill being marſhal of &c. aforeſaid, and was duly charged in cuſtody as aforeſaid with a declaration at ſuit of the ſaid plaintiff in ſaid bill in the plea aforeſaid, according

cording to the uſual courſe and practice of ſaid court of our ſaid lord the king here, to wit, at Weſtminſter aforeſaid, whereby and by means whereof, ſaid defendant then and ſtill being marſhal, &c. then and there had and detained ſaid S. in his cuſtody at ſuit of the ſaid plaintiff in the plea aforeſaid for want of bail to ſaid bill, and ſuch proceedings were thereon had in ſaid plea againſt ſaid S. at ſuit of ſaid plaintiff, that afterwards, to wit, in term in the year of the reign of our lord the now king, ſaid plaintiff by the conſideration of the ſaid court of our ſaid lord the king, before the king himſelf here, to wit, at Weſtminſter aforeſaid, recovered in ſaid plea againſt ſaid S. pounds which were then and there in and by ſaid court awarded againſt ſaid S. to ſaid plaintiff for his damages which he had ſuſtained as well on occaſion of the not performing of the ſeveral promiſes and undertakings aforeſaid, as for his coſts and charges by him laid out about his ſuit in that behalf, whereof ſaid S. was duly convicted, as by the record and proceedings thereof remaining in ſaid court of our ſaid lord the king, before the king himſelf at Weſtminſter aforeſaid, in full force and wholly unſatisfied, more fully appears; and ſaid plaintiff further ſaith, that ſaid S. ſo being in the cuſtody of ſaid defendant, marſhal of, &c. as aforeſaid, charged as aforeſaid at ſuit of ſaid plaintiff, until he ſaid defendant ſo being marſhal of, &c. as aforeſaid, not regarding the duty of his ſaid office of marſhal of the marſhalſea, but contriving, and maliciouſly and fraudulently intending craftily and ſubtilly to deceive and defraud ſaid plaintiff and to hinder and to deprive him of the means of recovering his damages on occaſion of the not performing of, &c. between ſaid times of exhibiting ſaid bill and ſaid charging ſaid S. in his cuſtody with ſaid declaration at ſuit of ſaid plaintiff in the ſaid plea as aforeſaid, and the ſaid time of the recovery of the aforeſaid judgment, and while ſaid plea was depending in ſaid court, and whilſt ſaid S. was in the cuſtody of ſaid defendant, marſhal of the marſhalſea charged as aforeſaid at ſuit in the ſaid plea, to wit, on the day of in ſaid year of the reign of our ſaid lord the now king, at W. aforeſaid, freely, wilfully, and voluntarily, and without any power or authority whatſoever permitted and ſuffered ſaid S. to go at large out of the cuſtody of him ſaid defendant, without the leave or licence and againſt the will of ſaid plaintiff, he ſaid defendant then and ſtill being marſhal of, &c. and ſaid plaintiff being then and yet wholly unſatisfied the money ſo then due and owing to him from ſaid S. as aforeſaid, or any part thereof, or the damages by him the ſaid plaintiff ſuſtained, on occaſion of the not performing of &c. by means of which ſaid premiſes, ſaid plaintiff is unjuſtly injured and damnified, and is greatly retarded and hindered in and from the recovering of his aforeſaid damages, and is very likely to loſe the ſame. Damages, &c. ſuit, &c. pledges, &c.

Drawn by Mr. WARREN.

Declaration for eſcape and falſe return of a *latitat*.

1ſt Count, for ſuffering priſoner to eſcape after arreſt.

2d Count, for neglecting to arreſt

SUSSEX, to wit. J. S. complains of T. F. eſquire, late ſheriff of the county of S. being, &c. of a plea of treſpaſs on the caſe; for that whereas, &c. [Set forth the original cauſe of action]; (*a*) *but ſaid ſeveral ſums of money being wholly unpaid to ſaid plaintiff, and ſaid promiſes and undertakings of ſaid T. W. being wholly unperformed, he the ſaid plaintiff, for the recovery of his damages by him ſuſtained on occaſion* of the not performing of ſaid ſeveral promiſes and undertakings afterwards, to wit, on the (*b*) day of , in the year of the reign of our ſovereign lord George the Third, king of Great Britain, &c. ſued and proſecuted out of the court of our lord the now king, before the king himſelf (the ſaid court then and ſtill being held at Weſtminſter, in the ſaid county of Middleſex), a certain writ of our ſaid lord the king called a *latitat*, againſt ſaid T. W. directed to the then ſheriff of S.; by which ſaid writ our ſaid lord the king commanded the ſaid then ſheriff of the county of S. &c. &c [Set forth the *latitat*]; which ſaid writ afterwards, and before the delivery thereof to the then ſheriff of the county of S. aforeſaid, to be executed as is hereinafter mentioned, was duly indorſed for bail, by virtue of an affidavit of the cauſe of action before then duly made and filed of record in the ſaid court of our ſaid lord the king, before the king himſelf here, according to the form of the ſtatute in ſuch caſe made and provided; which ſaid writ ſo indorſed, afterwards and before the return thereof, to wit, on, &c. in the year aforeſaid, at, &c. aforeſaid, in ſaid county of Suſſex, was delivered to ſaid defendant, who then, and from thenceforth until, and at and after the return of ſaid writ, was ſheriff of the ſaid county of Suſſex, to be executed in due form of law ‡; by virtue of which ſaid writ he the defendant, ſo then being ſheriff of ſaid county of Suſſex as aforeſaid, afterwards and before the return of the ſaid writ, to wit, on the day and year laſt aforeſaid, at, &c. aforeſaid, and within his bailiwick, did take and arreſt ſaid T. W. by his body, and then and there had and detained him in cuſtody at the ſuit of the ſaid plaintiff for the cauſe aforeſaid, by virtue of ſaid writ, and for want of bail thereto, to wit, at, &c. aforeſaid; yet the ſaid defendant, ſo being ſheriff of the ſaid county of S. not regarding the duty of his office as ſuch ſheriff as aforeſaid, but contriving and maliciouſly intending wrongfully and unjuſtly to hurt, injure, and prejudice ſaid plaintiff, and to deprive him of the means of the recovery of his damages aforeſaid, did afterwards, to wit, on the day and year laſt aforeſaid, at, &c. aforeſaid, without the leave, &c. of ſaid plaintiff, voluntarily ſuffer and permit the ſaid T. W. *to eſcape and go at large wherefover he*

(*a*) If the original cauſe of action is in debt inſtead of the words in Italic, ſay, *and ſaid pound, being wholly unpaid to ſaid plaintiff, and ſaid writing obligatory being in full force, he the ſaid plaintiff, for the recovery of his ſaid debt*"

(*b*) The day on which the writ was teſted.

would

would (a) [illegible] of the cuſtody of him ſaid defendant, (he the ſaid defendant then being ſheriff of ſaid county of S. and the ſaid plaintiff then and there being wholly unſatisfied for his ſaid damages, to wit, at, &c. aforeſaid); and ſaid defendant, ſo being ſheriff of the ſaid county of S. did afterwards, to wit, on the day of , in the year of Our Lord , being the day of the return of ſaid writ, falſely and deceitfully return upon the ſaid writ to ſaid court of our ſaid lord the king, before the king himſelf at Weſtminſter aforeſaid, that the ſaid T. W. was not found in his bailiwick, by means of which ſaid premiſes he the ſaid plaintiff is greatly hurt, prejudiced, and damnified, and greatly hindered, prevented, and retarded from the recovery of his damages aforeſaid, and is very likely wholly to loſe the ſame, to wit, at, &c. aforeſaid: And whereas the ſaid T. W. &c. &c. [Set forth the original cauſe of action as before, and then proceed to this mark in the firſt Count ‡, and then go on as follows]: And ſaid plaintiff further ſaith, that ſaid T. W. after the delivery of the ſaid laſt-mentioned writ to ſaid defendant (ſo being ſheriff of ſaid county of S. as aforeſaid), and before the return thereof, to wit, on the day and year laſt aforeſaid, and on divers other days and times between that day and the return of the ſaid laſt-mentioned writ, and within the bailiwick of ſaid defendant (ſo being ſuch ſheriff as aforeſaid), to wit, at, &c. aforeſaid, was in the ſight and in the company and preſence of ſaid defendant, ſo that ſaid defendant being ſheriff of ſaid county of, &c. as aforeſaid, could and might at all or any, or either of thoſe days and times, have taken and arreſted ſaid T. W. by his body, by virtue of ſaid laſt-mentioned writ, at the ſuit of ſaid plaintiff, if he would or had a mind ſo to have done; yet he ſaid defendant, ſo being ſheriff of ſaid county of, &c. as aforeſaid, did not, nor would at any or either of thoſe days and

2d Count to the laſt declaration (b).

(a) Qu. It this is ſufficient without ſaying *non comperuit ad diem*, 4. Bac. Abr. 19 cites Noy 72. the ſheriff of Nottingham's caſe, where it was held not to be ſufficient, becauſe the ſheriff might let defendant go at large upon bail.

(b). This Count may at firſt ſeem repugnant to the former, but ſuch Count is to be conſidered as a diſtinct declaration adjudged on error from C. B. into K. B. Loft's Rep. 63.

N. B. As an abſolute caption in an action for a falſe return of a *latitat* is very hard to be proved, it is neceſſary to add *a ſecond Count* (d) to the declaration, omitting the caption, an d inſtead thereof ſo ſhew that the ſheriff *could and might, but did not nor would arreſt*. I remember a caſe *of Hall againſt ſheriff of Middleſex*, Michaelmas, 11. Geo. 3. where it was proved that the officer was ſeveral times in company with the man againſt whom the writ iſſued, and that he told the attorney for the plaintiff that he ſhould have a bail bond, &c.; yet, as they could not prove an abſolute caption (which was alledged in the declaration as only having one Count), the plaintiff was nonſuited before Mr. Juſtice Aſhhurſt in London, and on argument before the court, Mr. Wallace for defendant, and Mr. Dunning for plaintiff, H. 11. G. 3. it was held it did not amount to a caption. Plaintiff nonſuited.

times, or at any other time before the return of ſaid laſt-mentioned writ, take or arreſt ſaid T. W. by his body at the ſuit of ſaid plaintiff, by virtue of ſaid laſt-mentioned writ, but wholly refuſed and neglected ſo to do; and afterwards, to wit, on, &c. being the day of the return of ſaid laſt-mentioned writ, he the ſaid defendant, ſo then being ſheriff of ſaid county of S. as aforeſaid, falſely and deceitfully returned, &c. &c. [as before.] Damages, &c. Suit, &c. Pledges, &c.

C. RUNNINGTON.

Declaration for a *falſe return of a fieri facias, where original action was in debt.*

1ſt Count ſtates ſeizure of goods ſufficient to diſcharge, &c. but had not the money at the return, &c. and falſe return.

MIDDLESEX, to wit. Thomas Brooke, gentleman, againſt Stephen Sayre, and William Lee, eſquires, late ſheriff of Middleſex, &c.; for that whereas plaintiff, in *Eaſter term, in the fourteenth year of, &c.* in his court of the bench at Weſtminſter, in the county of Middleſex, before ſir William de Grey, knight, and his companions, then his majeſty's juſtices of the bench there, by the conſideration and judgment of ſaid court *recovered* (*a*) againſt one Ann Popple as well a certain debt of two hundred and fifty pounds as alſo ſixty-three ſhillings *which in and by ſaid court were awarded to ſaid plaintiff* for his damages which he has ſuſtained by occaſion of the detaining that debt, whereof the ſaid Ann was convicted, as by the record (*b*) and proceedings thereof remaining in ſaid court, which ſaid judgment remains in its full force, not reverſed, annulled, ſet aſide, paid off, or ſatisfied to ſaid plaintiff; and ſaid judgment being in full force, plaintiff, on the twentieth day of April, in the fourteenth year aforeſaid, for obtaining ſaid debt and damages ſued out of ſaid court a certain writ of our ſaid lord the king called a *fieri facias*, directed to the then ſheriff of Middleſex; by which ſaid writ our ſaid lord the king commanded, &c. [recite the writ]; which ſaid writ afterwards, and before the return thereof, to wit, on, &c. in the fourteenth year aforeſaid, at Weſtminſter aforeſaid, was delivered to ſaid defendants, who then and from thence for a long time, to wit, until and at and after the return thereof, were ſheriff of the ſaid county of M. to be executed in due form of law; by virtue of which ſaid writ, ſaid defendant, ſo being ſheriff of ſaid county, afterwards and before the return of ſaid writ, to wit, on, &c. in the fourteenth year aforeſaid, at Weſtminſter aforeſaid, and within ſaid then ſheriff's bailiwick, took into his hands and poſſeſſion divers goods and chattles of ſaid A. P. (1) *to the value of the whole debt and damages aforeſaid*; yet defendants, ſo being ſheriff of ſaid county of M. not regarding the duty of their office as ſuch ſheriff as aforeſaid, but contriving and fraudulently intending to hurt, &c. ſaid plaintiff in this behalf, and

(*a*) "to a large value, to wit, to the value of the money directed by the indorſement on the ſaid writ to be levied, being thereof levied

part and parcel of the ſaid debt and damages aforeſaid, in form aforeſaid recovered, and the money ſo directed to be levied by the indorſement"

to deprive him of great part of his debt and damages aforeſaid, and of the means of recovering ſame, ſaid defendants, ſo being ſuch ſheriff as aforeſaid, had, nor had either of them ſaid money before his majeſty's juſtices of the bench at Weſtminſter, at the return of ſaid writ, to render to plaintiff for his debt and damages aforeſaid, according to the exigency of ſaid writ; nor have ſaid defendants, ſo being ſuch ſheriff as aforeſaid, paid ſaid debt and damages aforeſaid to ſaid plaintiff, but therein wholly failed and made default; and at the return of ſaid writ, falſely, maliciouſly, and deceitfully returned to the juſtices of our ſaid lord the king of the bench at Weſtminſter aforeſaid in ſaid writ, that by virtue of that writ to ſaid ſheriff directed, he had cauſed to be levied of the goods and chattels of the ſaid A. B. in his bailiwick fifty-ſix pounds ſeven ſhillings, which money he had paid to plaintiff in ſatisfaction of ſo much of debt and damages in ſaid writ mentioned, and that ſaid A. P. had no other or more goods or chattels in his bailiwick, whereof he could cauſe to be made the reſidue of ſaid debt and damages, or any part thereof, as by ſaid writ and return thereof remaining of record in ſaid court appears; by means of which ſaid premiſes ſaid plaintiff is greatly injured and deprived of the means of obtaining the reſidue of his ſaid debt and damages, and is likely wholly to loſe the ſame: And whereas, &c. [as in firſt Count, till you have recited the writ]: And the ſaid plaintiff avers, that ſaid defendants, ſo being ſheriff as aforeſaid, afterwards and before the return of ſaid writ, to wit, on the twenty-ſeventh day of April, in the year aforeſaid, within his bailiwick, to wit, at, &c. aforeſaid, ſeized and took divers other goods and chattels of ſaid A. P. *to value of full debt and damages aforeſaid* (*a*), under colour and pretence of levying of ſaid debt and damages thereof, and might thereof have levied ſaid full debt and damages as he ought to have done; yet, &c. [as before] whilſt ſaid goods and chattels ſo remained in his cuſtody under ſaid ſeizure, and before the return of ſaid writ, to wit, on the day and year laſt aforeſaid, and on divers other days and times between that day and the return of ſaid writ, ſo negligently, careleſsly, and incautiouſly behaved, conducted, and demeaned himſelf in execution of his ſaid office of ſheriff as aforeſaid, that he then and there ſuffered and permitted great part of the goods and chattels to be purloined, reſcued, and taken away out of his cuſtody and poſſeſſion by ſome perſon or perſons to ſaid plaintiff unknown, and the ſame were thereby wholly loſt; and at the return of ſaid writ, ſaid defendants, late ſheriff of Middleſex as aforeſaid, returned, &c. [as before]: And whereas, &c. [as in firſt Count, till you come to the end of recital of writ and delivery thereof, then go on as follows]: And plaintiff avers, that the ſaid A. P. at the time of the delivery of ſaid laſt-mentioned writ to ſaid defendants, ſo then being ſheriff of Middleſex, to be executed in due form of law as aforeſaid, and from thence for a long time, to wit, until the return of ſaid laſt-mentioned writ, had di-

2d Count, a like ſeizure, but by negligence ſome were ſtolen.

3d Count, defendant had goods, but ſheriffs neglected to levy.

(*a*) See alteration in firſt Count, if neceſſary.

vers

vers goods and chattels in the bailiwick of ſaid then ſheriff to the value of the whole debt and damages aforeſaid; and that defendants, ſo being ſheriff of Middleſex, might and ought to have cauſed the debt and damages laſt aforeſaid to have been fully levied, whereof ſaid late ſheriff then and there had due notice; yet, &c, did not levy, or cauſe to be levied of thoſe goods, &c. or of any other goods, &c. in his bailiwick, the whole of ſaid laſt-mentioned debt and damages but one fifty-ſix pounds ſeven ſhillings, part thereof, and no more; and at the return, &c. [as in firſt Count]. Damages one hundred pounds. Suit, &c.

This ſhould be conformable to the judgment if entered up; if not entered up, make the judgment conformable to the declaration in debt.

Drawn by MR. WARREN.

Pleas before our lord the king at Weſtminſter, of the term of St. Hilary, in the twentieth year of the reign of our ſovereign lord George the Second, by the grace of God, &c. and in A. D. 1746. (Roll. 1013.)

Record in anaction againſt a ſurviving *ſheriff*, for the *eſcape* of a perſon who was in cuſtody under an *alias capias ad reſpondendum*, and who, after his eſcape, died in-

LONDON, to wit. Thomas Wright puts in his ſtead William Treherne, his attorney, againſt ſir Samuel Pennant, knight, in a plea of treſpaſs on the caſe: London, to wit. The ſaid ſir Samuel Pennant, knight, puts, &c. London, to wit. It is to be remembered, that on Thurſday next, after eight days of St. Hilary in this ſame term, before our lord the king at Weſtminſter, came Thomas Wright, by William Treherne his attorney, and brought here into the court of our ſaid lord the king then there his certain bill againſt ſir Samuel Pennant, knight, in the cuſtody of the marſhal of the marſhalſea of our lord the now king, before the king himſelf, who, together with Walker Barnard, eſquire, now deceaſed, were late ſheriffs of the city of London, for this, to wit, that whereas one Nicholas Cary, after the firſt day of May 1705, that is to ſay, on the thirteenth day of April 1743, at London aforeſaid, to wit, in the pariſh of St. Mary-le-bow, in the ſaid ward of Cheap, made his certain note in writing, commonly called a promiſſory note [here the original cauſe of action was ſet forth, which was aſſumpſit upon two promiſſory notes]; which ſaid ſeveral ſums of money being due and unpaid, and the ſaid promiſes and undertakings of the ſaid Nicholas wholly unperformed, he the ſaid plaintiff, for the obtaining and recovery of his damages by him ſuſtained, by reaſon of the non-performance of ſaid promiſes and undertakings made by ſaid Nicholas as aforeſaid, afterwards and after the expiration of ſaid ſeven months in ſaid firſt Count contained, and alſo after the expiration of ſaid twelve months, in ſaid ſecond note contained, that is to ſay, in the term of the Holy Trinity, in the eighteenth and nineteenth years in the reign of our lord the preſent king, proſecuted out of the court of our ſaid

lord

lord the king, before the king himſelf (the ſaid court then and there being held at Weſtminſter, in the county of Middleſex), a certain writ of our ſaid lord the king called an *alias capias*, directed to the then ſheriff of London; by which ſaid writ the ſaid lord the king commanded them, as formerly he had commanded them, that they ſhould take the ſaid Nicholas, &c. [recite the writ]; on which ſaid writ, according to the form of the ſtatute in ſuch caſe made and provided, was indorſed, that the ſaid ſheriffs ſhould take bail for thirty pounds by affidavit affiled; which ſaid writ afterwards, and before the return thereof, that is to ſay, upon the ſecond day of July, in the twentieth year of the reign, &c. at London, &c. aforeſaid, was delivered to Walter Barnard, eſquire, and ſaid defendants then being ſheriffs of ſaid city of London, to be executed in due form of law: And ſaid plaintiff further ſaith, that ſaid W. Barnard, eſquire, the ſaid defendant, ſo being ſheriffs of ſaid city of L. as aforeſaid, they the ſaid W. B. and ſaid defendant afterwards, and in the lifetime of ſaid W. B. and before the return of ſaid writ, to wit, on the day and year laſt aforeſaid, within the bailiwick of ſaid ſheriffs, to wit, at L. aforeſaid, took and arreſted ſaid Nicholas by his body, and had and detained him there in their cuſtody for the cauſe aforeſaid; nevertheleſs ſaid W. B. and ſaid defendant, in his lifetime, not regarding the duty of their office of ſheriffs of ſaid city of London, but contriving and intending to hinder the proceeding of ſaid plaintiff in this ſuit againſt the ſaid Nicholas, and to deprive him of his remedy for the recovery of his damages by him ſuſtained by reaſon of the non-performance of ſaid promiſes and undertakings of ſaid Nicholas afterwards, and before the return of ſaid writ, to wit, on the day and year laſt-mentioned (the ſaid W. B. and ſaid defendant ſo then being the ſheriffs of London aforeſaid), at L. &c. aforeſaid, without the licence and agreement, and againſt the will of ſaid plaintiff, and without any legal warrant and authority whatſoever, voluntarily permitted and ſuffered ſaid Nicholas to eſcape out of their cuſtody, and freely to go at large whither he would, that is to ſay, at L. &c. aforeſaid, the ſaid plaintiff not being ſatisfied his damages by him ſuſtained by reaſon of the non-performance of ſaid promiſes and undertakings, and ſaid Nicholas did not appear before our lord the king at Weſtminſter to anſwer ſaid plaintiff in his ſaid plea and bill aforeſaid, and ſaid Nicholas, ſince the permiſſion of ſaid W. B. and ſaid defendant to eſcape as aforeſaid, died inſolvent; by reaſon of which ſaid premiſes ſaid plaintiff is deprived of his remedy for the recovering of his damages, and is in manifeſt danger of loſing the ſame; whereupon ſaid plaintiff ſaith he is injured, and hath damage of ſixty pounds, and therefore he brings his ſuit, &c.

Judgment by default.

And the aforeſaid ſir Samuel, by A. B. his attorney, comes and defends the force and injury when and where, &c. and ſaid plaintiff prays that ſaid defendant may anſwer to his declaration aforeſaid; and ſaid defendant, although he was ſolemnly called, did

did not appear, nor hath ſaid any thing in bar or preclusion of the aforeſaid action of ſaid plaintiff, whereby ſaid plaintiff remains thereof againſt him undefended, for which ſaid plaintiff ought to recover againſt ſaid defendant his damages which he has ſuſtained by reaſon of the premiſes; *but becauſe* it is unknown to the ſaid court of ſaid lord the king now here what damages ſaid plaintiff hath ſuſtained in this particular by occaſion of the premiſes aforeſaid, *therefore it is commanded* to the ſheriffs, that they do diligently enquire by the oaths of twelve good and lawful men of L. aforeſaid what damages the ſaid plaintiff hath ſuſtained by occaſion of the premiſes aforeſaid, as for his coſts and charges by him about his ſuit in that behalf expended, and that they ſhould return to our ſaid lord the king the inquiſition which they ſhould take thereon, on Wedneſday next after fifteen days from the day of Eaſter, under their ſeals and the ſeals of thoſe by whoſe oath they ſhall take the ſame, together with the writ of ſaid lord the king to them directed: *At which day* come the aforeſaid plaintiff by his attorney aforeſaid, and the ſaid ſheriffs of L. aforeſaid, to wit, Chriſtopher Gaſcoyne, eſquire, and Edward Davies, eſquire, did return a certain inquiſition indented and taken before them at Guildhall, in the city of London, in the pariſh of St. Michael Baſſiſhaw in the ſame city, on the fourth day of March, in the twenty-firſt year of the reign of our ſovereign lord George the Second, by the Grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. by the oath of twelve honeſt and lawful men of this bailiwick, by which it is found that the ſaid plaintiff hath ſuſtained damage to the ſum of thirty pounds, by reaſon of the premiſes aforeſaid, beſides his coſts and charges by him about his ſuit in this behalf laid out, and for thoſe coſts and charges to the ſum of twenty-ſeven pounds four ſhillings; *therefore it is conſidered* that the ſaid plaintiff do recover againſt ſaid defendant his damages aforeſaid found by the ſaid inquiſition in manner aforeſaid, and alſo eighteen pounds twelve ſhillings and eightpence to the ſaid plaintiff for his coſts and charges aforeſaid by the ſaid court of our ſaid lord the king now here, by his own aſſent adjudged for increaſe, which ſaid damages amount in the whole to fifty pounds; and the ſaid defendant, in mercy, &c.

Award of inquiſition.

Return thereof.

Final judgment.

Mercy, &c.

Drawn by MR. WARREN.

I have looked over this tranſcript, and cannot find any fault ſufficient to reverſe the judgment therein. T. W.

Declaration againſt the bailiff of the liberty of the Tower for taking of a priſoner under a capias and reſponſum iſſuing out of the court of the Tower and liberty thereof.

MIDDLESEX, to wit. Francis Buttan complains of Richard Northcote being, &c. in a plea of treſpaſs on the caſe; for that whereas the liberty of the Tower of London is an ancient liberty, and whereas within the liberty of the Tower aforeſaid there is, and from time whereof the memory of man is not to the contrary, there hath been an ancient court of record of our lord

the

the king of the Tower and liberty of the Tower aforeſaid, held within the liberty of the Tower aforeſaid, in a certain houſe ſituate in a certain place called Neptune-ſtreet, in Wellcloſe-ſquare, in the pariſh of St. John, Wapping, aforeſaid, in the county of Middleſex, before the chief ſteward of the ſame court or his deputy for the time being on Wedneſday in every week: And whereas the bailiff, or maſter, or gaoler, or keeper of the priſon of ſaid court ſituate in the aforeſaid place called Neptune-ſtreet, in the pariſh of St. John, Wapping, aforeſaid, in ſaid county of Middleſex, to wit, within the liberty of the Tower of L. aforeſaid, from time whereof the memory of man is not to the contrary hath had and hath uſed and been accuſtomed to have the cuſtody of the ſaid priſon of the ſaid court of the Tower and liberty of the Tower of L. and of all priſoners taken and arreſted by virtue of any writ of the lord the king iſſued out of the court, and for want of bail committed to the ſaid priſon: And whereas the ſaid defendant, on the fifth day of February A. D. 1766, and long before, was, and from thence hitherto hath been, and ſtill is bailiff or maſter gaoler, or keeper of ſaid priſon: And whereas heretofore, to wit, on the tenth day of Auguſt A. D. 1765, at the pariſh aforeſaid, in the county aforeſaid, and within the liberty aforeſaid, and alſo within the juriſdiction of ſaid court, one John Maſters made his note in writing, commonly called a promiſſory note, &c. [A Count on a promiſſory note, with aſſumpſit to pay, &c. according to the tenor and effect of ſaid note] And whereas ſaid ſum of eight pounds thirteen ſhillings in ſaid note mentioned being wholly unpaid to ſaid plaintiff, and the promiſe and undertaking of ſaid John Maſters to ſaid plaintiff wholly unperformed, he the ſaid plaintiff, for the recovery of his damages by him ſuſtained on occaſion of the non-performance of ſaid promiſe and undertaking, afterwards, to wit, at the court of the ſaid lord the king of the Tower and liberty of the Tower aforeſaid, held within the liberty at the place aforeſaid in that behalf above-mentioned, and within the juriſdiction of ſaid court, on Wedneſday, the fifth day of February, in the year of the reign of our lord the now king, before Paul Field, eſquire, then chief ſteward of ſaid court, according to the cuſtom of the ſaid Tower and liberty thereof, from time whereof the memory of man is not to the contrary, uſed and approved of in the ſaid liberty, and in the Tower and liberty of the Tower aforeſaid, the ſaid plaintiff came in his proper perſon according to the cuſtom aforeſaid, and levied his certain plaint againſt ſaid John Maſters in a plea of treſpaſs on the caſe to his damages of twelve pounds; and afterwards, to wit, at the court of our ſovereign lord the king of the Tower and liberty of the Tower of L. held in the place aforeſaid, and within the juriſdiction of ſaid court, on Wedneſday, the fifth day of February, in the ſixth year aforeſaid, the ſaid Paul Field, then ſteward of ſaid court, iſſued out of ſaid court a certain precept of our ſaid lord the king called a *capias ad reſpondendum*, directed to the chief bailiff of the Tower and liberty aforeſaid; and alſo to all and ſingular the bailiffs and officers

officers of the court aforeſaid, eſpecially to George Ballentine, by which ſaid precept ſaid Paul Field, ſo being ſuch chief ſteward, did, on behalf of our ſaid lord the king, command them and every of them that they, ſome or one of them, ſhould take ſaid J. Maſters if he ſhould be found in their bailiwick, and him ſafely keep, ſo that they might have his body before him the ſaid chief ſteward of ſaid court, or his deputy, at the then next court here to be held on Wedneſday, the twelfth day of February then next following, to anſwer to ſaid plaintiff in a plea of treſpaſs on the caſe to his damages of twelve pounds, and that they ſhould then have there that precept, which ſaid precept was duly indorſed for bail for eight pounds and upwards; and the ſame precept afterwards, and before the return thereof, to wit, on the tenth day of February, A. D. 1766, at the pariſh, and within the liberty aforeſaid, and the juriſdiction of the ſaid court, was delivered unto one George Ballentine (he the ſaid George Ballentine then being one of the bailiffs and officers of ſaid court of the Tower aforeſaid and the liberty thereof, to be by him executed in due form of law; by virtue of which ſaid precept, the ſaid G. B. then being one of the bailiffs and officers of the court aforeſaid of the Tower and liberty of the Tower aforeſaid, afterwards and before the return of the ſaid precept, to wit, on ſaid tenth day of February, A. D. 1766 aforeſaid, and within the juriſdiction of ſaid court, took and arreſted ſaid J. Maſters, and for want of bail thereto afterwards, to wit, on the twelfth day of February aforeſaid, in the year 1766 aforeſaid, at the pariſh of St. John, Wapping, in the ſaid county of Middleſex, committed him the ſaid John Maſters to the priſon beforementioned belonging to ſaid court; by virtue of which ſaid arreſt and commitment, ſaid defendant, ſo being bailiff, or maſter, or goaler, or keeper of the priſon aforeſaid of the Tower aforeſaid, and the liberty of the Tower, on ſaid twelfth day of February 1766 aforeſaid, at the pariſh aforeſaid, of, &c. aforeſaid, in the county of M. aforeſaid, and within the juriſdiction of ſaid court, had and detained ſaid John Maſters in the priſon aforeſaid, by virtue of the precept for want of bail thereto, and kept and detained him ſaid John Maſters under the cuſtody of him ſaid defendant, ſo being ſuch bailiff, or maſter goaler, or keeper of the priſon aforeſaid from thence until the thirteenth day of March then next following in ſaid year 1766; yet ſaid defendant, not regarding his duty of bailiff, or maſter goaler, or keeper of the priſon of the Tower aforeſaid and liberty of ſaid Tower, but contriving and fraudulently intending to hinder and deprive ſaid plaintiff of his remedy in this behalf, afterwards, to wit, on the thirteenth day of March, A. D. 1766, at the pariſh of, &c. in ſaid county of M. permitted and ſuffered ſaid J. M. to eſcape out of ſaid priſon, and out of the cuſtody of him ſaid defendant, ſo then and now being bailiff, or maſter goaler, or keeper of the priſon aforeſaid of the Tower and liberty aforeſaid, and to go at large whereſoever ſaid J. M. would, without the licence or conſent of ſaid plaintiff, and againſt the will of ſaid plaintiff, he ſaid plaintiff not being ſatisfied

fied his ſaid damages, or any part thereof, and ſaid John M. from thence continually hitherto hath abſconded in places unknown to ſaid plaintiff, ſo that ſaid plaintiff is altogether deprived of any remedy for the recovery of his ſaid damages. Damages twenty pounds. Suit, &c. Pledges, &c.

Hilary Term, 22. Geo. III.

Declaration against a ſheriff, for a falſe return of a *fieri facias*. 1ſt Count. ſtates ſeizure and levy of goods ſufficient, but had not money before, &c. at return, &c. and falſe return.

HEREFORDSHIRE, to wit. John Jones complains of Edmund Peterſhall, eſquire, being in the cuſtody of the, &c. in a plea of treſpaſs on the caſe; for that whereas the ſaid John heretofore, to wit, in Michaelmas term, in the twenty-firſt year of the reign of our lord the now king, before the king himſelf, in the court of our lord the now king himſelf here, to wit, at Weſtminſter, in the county of Middleſex, by the conſideration of the ſaid court recovered againſt one William Carpenter twenty-five pounds, which in the ſame court were adjudged to the ſaid John for his damages which he had ſuſtained as well by reaſon of a certain treſpaſs and aſſault before then made and committed by the ſaid William Carpenter upon the ſaid John, and whereof the ſaid William Carpenter was convicted, as for his coſts and charges by him laid out about his ſuit in that behalf, as by the record and proceedings thereof ſtill remaining in the ſaid court of our ſaid lord the king, before the king himſelf here, to wit, at Weſtminſter aforeſaid, more fully appears, which ſaid judgment ſtill remains in its full force, ſtrength, and effect, in no wiſe reverſed, annulled, ſet aſide, paid off, or ſatisfied: And the ſaid John in fact further ſaith, that the ſaid judgment ſo by him recovered as aforeſaid being in full force as aforeſaid, and the ſaid damages therein mentioned unpaid and unſatisfied, he the ſaid John, on the twelfth day of February, in the twenty-firſt year aforeſaid, for the obtaining the ſaid damages ſued and proſecuted out of the ſaid court of our ſaid lord the king himſelf, a certain writ of our ſaid lord the king, to wit, a writ of our ſaid lord the king called a *fieri facias*, directed to the then ſheriff of Herefordſhire; by which ſaid writ our ſaid lord the king commanded the ſaid ſheriff, that of the goods and chattels of the ſaid William Carpenter in his bailiwick he ſhould cauſe to be levied twenty-five pounds, which the ſaid John Jones in the ſaid court of our ſaid lord the king, before the king himſelf at Weſtminſter, had lately recovered againſt him, as well for his damages which he had ſuſtained by occaſion of a certain treſpaſs and aſſault then lately made by the ſaid William Carpenter upon him the ſaid John, as for his coſts and charges which he had been put to about his ſuit in that behalf, being the damages ſo recovered by the ſaid John as aforeſaid, whereof the ſaid William was convicted, as appeared to our ſaid lord the king of record; and that the ſaid ſheriff ſhould have that money before our ſaid lord the king at Weſtminſter on Monday next after the morrow of the aſcenſion of Our Lord, to render to the ſaid John for his damages and coſts aforeſaid; and that the ſaid ſheriff ſhould have there then that writ, which ſaid writ afterwards, and before the return thereof,

of, to wit, on the ſeventeenth day of March, A. D. 1781, at Hereford, in the ſaid county of Hereford, was delivered to the ſaid Edmund, who then, and from thence until, and at and after the return of the ſaid writ, was ſheriff of the ſaid county of Hereford, to be executed in due form of law; by virtue of which ſaid writ the ſaid Edmund, ſo being ſheriff as aforeſaid, afterwards and before the return of ſaid writ, to wit, on the day and year laſt aforeſaid, at Hereford aforeſaid, in the ſaid county of Hereford, and within his bailiwick, as ſuch ſheriff, ſeized and took into his hands and poſſeſſion, as ſuch ſheriff as aforeſaid, divers goods and chattels of the ſaid William Carpenter to the value of the whole of the damages ſo recovered by the ſaid John as aforeſaid, and in the ſaid writ mentioned, and thereof levied the ſaid money ſo directed to be levied by the ſaid writ; yet the ſaid Edmund, ſo being ſuch ſheriff as aforeſaid, not regarding the duty of his ſaid office of ſheriff as aforeſaid, but contriving and fraudulently intending wrongfully and unjuſtly to hurt, injure, and damnify the ſaid John in this behalf, and to deprive him of his ſaid damages ſo by him recovered as aforeſaid, he the ſaid Edmund had not the ſaid ſum of twenty-five pounds ſo by him levied as aforeſaid, under and by virtue of the aforeſaid writ, or any part thereof, before our ſaid lord the king at Weſtminſter at the return of the ſaid writ, to render to the ſaid John according to the exigency and command of the ſaid writ, nor has he the ſaid Edmund, ſo being ſuch ſheriff as aforeſaid, at any time whatſoever paid the ſaid money ſo by him levied as aforeſaid, or any part thereof, to the ſaid John, but hath therein wholly failed and made default, to wit, at Hereford aforeſaid, in the ſaid county of Hereford: And the ſaid John in fact further ſaith, that at the return of the ſaid writ, the ſaid Edmund ſo being ſuch ſheriff as aforeſaid, falſely, deceitfully, and maliciouſly returned to our ſaid lord the king at Weſtminſter aforeſaid on the ſaid writ, that by virtue of the ſaid writ to him the ſaid Edmund directed as aforeſaid, he had levied of the goods and chattels of the ſaid William Carpenter, in the ſaid writ named, the ſum of five pounds five ſhillings and ſixpence, which may be had ready before our lord the king at the day and place in the ſaid writ mentioned, to render to the ſaid John Jones, in the ſaid writ mentioned, in part of the damages and coſts in the ſaid writ ſpecified: And he alſo further certified to our ſaid lord the king on the ſaid writ, that the aforeſaid William Carpenter had no other or more goods or chattels in his bailiwick whereof he could cauſe to be made the reſidue of the damages and coſts aforeſaid, according to the exigency of that writ, as by the ſaid writ and return thereof now remaining of record in the ſaid court of our lord the king, before the king himſelf here, to wit, at Weſtminſter aforeſaid, fully appears; by means of which ſaid premiſes the ſaid John hath been hindered and prevented from obtaining the damages ſo by him recovered as aforeſaid, and is like wholly to loſe the ſame, to wit, at H. aforeſaid, in the ſaid county of Hereford aforeſaid: And whereas, &c. [Go on as in

Ld Court, ſtates that although ſeized goods, &c. to the value of eighteen pounds, and might have ſold them for their real value, yet he levied only five pounds five ſhillings and ſixpence, and no more.

firſt

firſt Count to the end of the recital of the writ and delivery thereof to the ſheriff, and then go on as follows]; by virtue of which ſaid laſt mentioned writ the ſaid Edmund, as ſuch ſheriff as aforeſaid, afterwards and before the return of the ſaid laſt-mentioned writ, to wit, on the day and year laſt aforeſaid, within his bailiwick, as ſuch ſheriff as aforeſaid, to wit, at H. aforeſaid, in the ſaid county of Hereford. ſeized and took divers other goods and chattels of the ſaid William Carpenter to a large amount or value, to wit, to the amount of eighteen pounds of lawful money of Great Britain: And the ſaid John in fact ſaith, that although the ſaid Edmund, ſo being ſuch ſheriff as aforeſaid, could and might have ſold the ſaid goods and chattels for the real and true value thereof, being a large ſum of money, to wit, the ſum of eighteen pounds, under and by virtue of the ſaid laſt-mentioned writ, and have thereby levied ſo much of the ſaid laſt mentioned damages ſo recovered by the ſaid John as aforeſaid, to wit, at Hereford aforeſaid. in the ſaid county of Hereford; yet the ſaid Edmund, ſo being ſuch ſheriff as aforeſaid, not regarding the duty of his ſaid office of ſheriff, but contriving and fraudulently intending to hurt, injure, and damnify the ſaid John in this behalf, and to deprive him of his aforeſaid damages, did not ſell or diſpoſe of the ſaid goods and chattels ſo by him ſeized and taken under and by virtue of their ſaid laſt-mentioned writ, for their real and true value, and thereby levy ſo much of the ſaid laſt-mentioned damages ſo recovered by the ſaid John as aforeſaid, as the ſaid value of the ſaid goods and chattels amounted unto, but on the contrary afterwards, and before the return of ſaid laſt mentioned writ, to wit, on the day and year laſt aforeſaid, at H. aforeſaid, in the ſaid county of H. ſold and diſpoſed of the ſaid laſt-mentioned goods and chattels of the ſaid William Carpenter, ſo ſeized by him the ſaid Edmund as aforeſaid for a much leſs ſum of money than their real and true value, to wit, for the ſum of five pounds five ſhillings and ſixpence and no more, and thereof levied ſuch ſum of money under and by virtue of the ſaid laſt mentioned writ, and in part of the damages ſo recovered by the ſaid John as laſt aforeſaid and no more, to wit, at H. aforeſaid, in the county of H. aforeſaid: And the ſaid John in fact further ſays, that at the return of the ſaid laſt-mentioned writ, &c. [as in firſt Count to the end of the return of the ſaid writ]; by means of which ſaid ſeveral laſt-mentioned premiſes the ſaid John is greatly injured, and has been hindered and prevented from obtaining a large part of the damages ſo by him recovered as laſt aforeſaid, and is likely wholly to loſe the ſame, to wit, at H. aforeſaid, in the ſaid county of Hereford: And whereas, &c. [as in firſt Count to the end of the recital of the writ, and the delivery thereof to the ſheriff, then proceed as follows]; by virtue of which ſaid laſt-mentioned writ he the ſaid Edmund, as ſuch ſheriff as aforeſaid, afterwards and before the return of the ſaid laſt-mentioned writ, to wit, on the day and year laſt aforeſaid, within his bailiwick as ſuch ſheriff as aforeſaid, to wit, at H. aforeſaid, in the ſaid county of Hereford, ſeized and took into his hands

3d Count, ſtates ſeizure and levy of goods, &c to the value of 5l 5s 6d part. &c. but had not money before, &c. at the return, &c. and falſe return.

hands and poſſeſſion as aforeſaid divers other goods and chattels of the ſaid William Carpenter of a large value, to wit, of the value of five pounds five ſhillings and ſixpence, and thereof then and there levied the ſum of five pounds five ſhillings and ſixpence, parcel of the ſaid damages ſo recovered by the ſaid John as laſt aforeſaid, and in the ſaid laſt-mentioned writ ſpecified; yet the ſaid Edmund, ſo being ſuch ſheriff as aforeſaid, not regarding the duty of his ſaid office of ſuch ſheriff as aforeſaid, but contriving and fraudulently intending wrongfully and unjuſtly to hurt, injure, and damnify the ſaid John in this behalf, and to deprive him of a great part of the ſaid damages ſo by him recovered as laſt aforeſaid, and of the means of recovering the ſame, had not the ſaid ſum of five pounds five ſhillings and ſixpence ſo by him levied as laſt aforeſaid, before our ſaid lord the king at Weſtminſter, to render to the ſaid John in part of the damages ſo by him recovered as laſt aforeſaid at the return of the ſaid laſt mentioned writ, and according to the exigency thereof, nor hath he paid the ſaid ſum of five pounds five ſhillings and ſixpence, or any part thereof, to the ſaid John, but hath therein wholly failed and made default, to wit, at H. aforeſaid, in the ſaid county of Hereford aforeſaid: And the ſaid John in fact further ſaith, that at the return of the ſaid laſt-mentioned writ, &c. [as in the firſt Count to the end of the return of the writ]; by means of which ſaid laſt-mentioned premiſes, the ſaid John is further injured and damnified, and has been hindered and prevented from obtaining a large part of the damages ſo by him recovered as laſt aforeſaid, and is likely wholly to loſe the ſame, to wit, at H. aforeſaid, in the ſaid county of Hereford: And whereas, &c. [as in firſt Count, to the end of recital of the writ, and the delivery thereof to the ſheriff, and then proceed as follows]; by virtue of which ſaid laſt-mentioned writ, the ſaid Edmund, ſo being ſuch ſheriff as aforeſaid, afterwards and before the return of the ſaid laſt-mentioned writ, to wit, on the day and year laſt aforeſaid, within his bailiwick, to wit, at H. aforeſaid, in the county of Hereford, ſeized and took divers other goods and chattels of the ſaid William Carpenter, of a large value, into his hands and poſſeſſion, as ſuch ſheriff as aforeſaid, under and by virtue of the ſaid laſt-mentioned writ and for the purpoſe in the ſaid writ mentioned, and could and might have executed the ſaid writ thereon; yet the ſaid Edmund, ſo being ſuch ſheriff as aforeſaid, not regarding the duty of his ſaid office of ſuch ſheriff as aforeſaid, but contriving and fraudulently intending wrongfully and unjuſtly to hurt, injure, and damnify the ſaid John in this behalf, and to deprive him of a great part of the damages by him recovered as laſt aforeſaid, and of the means of obtaining the ſame whilſt the ſaid laſt mentioned goods and chattels remained in his cuſtody under the ſaid ſeizure thereof, and before the return of the ſaid laſt-mentioned writ, to wit, on the day and year laſt aforeſaid, and on divers other days and times between that day and the day of the return of the ſaid laſt-mentioned writ, ſo negligently, careleſsly, and incautiouſly behaved, conducted, and demeaned himſelf in the execution of his ſaid office of ſheriff as aforeſaid, and took ſo little and ſuch

4th Count, ſtates ſeizure of goods ſufficient, but through negligence ſuffered great part of ſame to be ſtolen, taken away, &c. only levied 5l. 5s. 6d. part, &c. and falſe return.

bad care of the ſaid goods and chattels ſo by him, ſeized and took in execution under and by virtue of the ſaid laſt-mentioned writ as aforeſaid, that the whole of the ſaid goods and chattels, except goods and chattels to the value of five pounds five ſhillings and ſixpence, were by and through the mere negligence, inattention, and want of care of the ſaid Edmund, as ſuch ſheriff as aforeſaid, afterwards and before the return of the ſaid laſt-mentioned writ, purloined, reſcued, and carried away out of his cuſtody or poſſeſſion by ſome perſon or perſons to the ſaid John unknown, and inſtead of the whole of the ſaid damages ſo recovered by the ſaid John as laſt aforeſaid, or ſo much thereof as the ſaid goods and chattels ſo ſeized and took into execution as laſt aforeſaid would have ſold for and produced, being levied by the ſaid Edmund as ſuch ſheriff as aforeſaid, under and by virtue of the ſaid laſt-mentioned writ, a much leſs portion of the damages, to wit, the ſum of five pounds five ſhillings and ſixpence was levied by the ſaid Edmund, under and by virtue of the ſaid laſt-mentioned writ, to wit, at H. aforeſaid, in the ſaid county of Hereford: And the ſaid John in fact further ſaith, that at the return of the ſaid laſt-mentioned writ, &c. [as in firſt Count to the end of the return of the writ]; by means of which ſaid ſeveral laſt-mentioned premiſes the ſaid John is further injured, and has been hindered and prevented from obtaining a large part of the damages ſo by him recovered as laſt aforeſaid, and is likely wholly to loſe the ſame, to wit, at H. aforeſaid, in the ſaid county of Hereford: And whereas, &c. [as in firſt Count, to the end of the recital of the writ, and the delivery thereof to the ſheriff, then proceed as follows]: And the ſaid John avers, that the ſaid W. Carpenter, at the time of the delivery of the ſaid laſt-mentioned writ to the ſaid Edmund, as ſuch ſheriff of the ſaid county of Hereford, for execution as aforeſaid, and afterwards, and before the return of the ſaid laſt-mentioned writ, had divers goods and chattels in the bailiwick of the ſaid ſheriff of the ſaid county of H. to a large amount, to wit, to the value of the ſaid damages ſo recovered by the ſaid John as laſt aforeſaid, and in the ſaid laſt-mentioned writ ſpecified; and that the ſaid Edmund, as ſuch ſheriff of the ſaid county of H. as aforeſaid, could and might, and ought to have ſeized the ſaid laſt-mentioned goods and chattels of the ſaid W. Carpenter, and thereof have fully levied the ſaid damages ſo recovered by the ſaid John as laſt aforeſaid, and in the ſaid laſt-mentioned writ ſpecified, as the ſaid Edmund, ſo being ſuch ſheriff as aforeſaid, well knew and had notice; yet the ſaid Edmund, not regarding the duty of his ſaid office of ſuch ſheriff as aforeſaid, but contriving and fraudulently intending wrongfully and unjuſtly to hurt, injure, and damnify the ſaid John, and to deprive him of a great part of his damages laſt aforeſaid, and of the means of recovering the ſame, did not at any time before the return of the ſaid laſt-mentioned writ, ſeize or take into his poſſeſſion, as ſuch ſheriff as aforeſaid, under and by virtue of the ſaid laſt-mentioned writ, the ſaid laſt-mentioned goods and chattels of the ſaid W. Carpenter, nor thereof, or of any other goods and chattels of the ſaid W. Carpenter, levy, or cauſe

to be levied the ſaid damages ſo recovered by the ſaid John as laſt aforeſaid, and in the ſaid laſt-mentioned writ ſpecified, but on the contrary the ſaid John in fact further ſaith, that the ſaid Edmund, as ſuch ſheriff of the ſaid county of H. as afor ſaid, duly ſeized and took into his poſſeſſion as ſuch ſheriff under the ſaid laſt-mentioned writ, a very ſmall part of the ſaid laſt-mentioned goods and chattels of the ſaid W. Carpenter, whereof he levied the ſum of five pounds five ſhillings and ſixpence and no more, to wit, at H. aforeſaid, in the county of Hereford. And the ſaid John in fact further ſaith, that at the return of the ſaid laſt-mentioned writ [as in firſt Count to the end of the return of the writ]; by means of which ſaid ſeveral laſt-mentioned premiſes, the ſaid John is further injured, and has been hindered and prevented from obtaining a great part of the damages ſo by him recovered as laſt aforeſaid, and is likely wholly to loſe the ſame, to wit, at Hereford aforeſaid, in the ſaid county of Hereford. Damages fifty pounds. Suit, &c. Pledges, &c.

V. LAWES.

Declaration againſt ſheriffs, for a falſe return to a writ of *latitat*.

1ſt Count, ſtating the arreſt.

LONDON, to wit. Edmund Fletcher complains againſt Joſeph Martin, eſquire, and William Baker, eſquire, late ſheriffs of London aforeſaid, being, &c.; for that whereas one Patrick Tullie, on the nineteenth of June 1771, at London aforeſaid, to wit, in the pariſh of St. Mary-le-bow in the ward of Cheap, was indebted to the ſaid Edmund in the ſum of forty-four pounds of, &c.; and being ſo indebted, he the ſaid Edmund afterwards, to wit, on the ſaid nineteenth of June 1771, proſecuted out of the court of our ſovereign lord the king, before the king himſelf (the ſaid court then and ſtill being at Weſtminſter, in the county of Middleſex), a certain writ of our ſaid lord the king commonly called a *latitat*, directed to the ſheriffs of London; by which ſaid writ, reciting that the ſaid lord the king had commanded the ſheriff of Middleſex that he ſhould take Mark Millichen and Patrick Tullie if they might be found in his bailiwick, and them ſafely keep, ſo that he might have their bodies before the ſaid lord the king at Weſtminſter at a certain day then paſt, to anſwer the ſaid Edmund Fletcher in a plea of treſpaſs, and alſo to the ſeveral bills of the ſaid Edmund Fletcher againſt the ſaid Mark Millichen for thirty ſix pounds upon promiſes, and alſo againſt the ſaid Patrick Tullie for forty-four pounds upon promiſes, according to the cuſtom of the ſaid court, before our ſaid lord the king to be exhibited, and that the ſheriff of M. at that day returned to the ſaid lord the king that the ſaid Mark and Patrick were not found in his bailiwick; and that thereupon on behalf of the ſaid Edmund it was ſufficiently atteſted to the ſaid court before the ſaid lord the king, that the aforeſaid Mark and Patrick did run up and ſecrete themſelves in the county of the ſaid ſheriffs of London, the ſaid lord the king commanded them the ſaid ſheriffs that they ſhould take them the ſaid Mark and Patrick if they might be found in their

their bailiwick, and ſafely keep them, ſo that they might have their bodies before the ſaid lord the king at Weſtminſter on Wedneſday next after the morrow of All Souls, to anſwer to the ſaid Edmund of the plea and bills aforeſaid, and that they the ſaid ſheriffs ſhould have there that writ; which ſaid *writ* afterwards, and before the return thereof, to wit, on the firſt of Auguſt 1771, at London aforeſaid, in the pariſh and ward aforeſaid, was *delivered* by the ſaid Edmund to the ſaid J. Martin and William Baker, then ſheriffs of London aforeſaid, to be by them executed in due form of law; and the ſaid J. and W. ſo being ſheriffs of London aforeſaid, afterwards and before the return of the ſaid laſt-mentioned writ, to wit, on the ſame day and year laſt aforeſaid, in the pariſh and ward aforeſaid, *took and arreſted* the ſaid Patrick by his body, and had him in cuſtody there for the cauſe aforeſaid; nevertheleſs the ſaid J. and W. not regarding the duty of their ſaid office of ſheriffs of London aforeſaid, but contriving and intending to deceive the ſaid Edmund, and alſo to hinder the proceedings of the ſaid Edmund in his ſuit againſt the ſaid Patrick, and to deprive him of his remedy for the recovery of the money due and owing to him from the ſaid Patrick as aforeſaid, afterwards, to wit, on the ſame day and year laſt aforeſaid (the ſaid Edmund not being ſatisfied of the ſaid money ſo due and owing to him as aforeſaid, without the licence and againſt the will of the ſaid Edmund, and without legal warrant or authority whatſoever), voluntarily permitted and ſuffered the ſaid Patrick, being in their cuſtody as aforeſaid, to eſcape out of their cuſtody and to go at large, whither he would, to wit, at London aforeſaid, in the pariſh and ward aforeſaid, in contempt of the ſaid lord the king, and of his ſaid court here, and to the great injury and oppreſſion of the ſaid Edmund; and the ſaid J. and W. at the return of the ſaid writ, falſely and deceitfully returned on the ſaid writ to the court here, that the ſaid Patrick was not found in their bailiwick, and the ſaid Patrick did not appear in the ſaid court of our ſaid lord the king here, to wit, at Weſtminſter aforeſaid, to anſwer to the ſaid Edmund in the plea aforeſaid, by reaſon whereof the ſaid Edmund was deprived of the means of the recovery of the ſaid ſum of money ſo due and owing to him as aforeſaid, and has loſt the ſame, to wit, at London aforeſaid, in the pariſh and ward aforeſaid: And whereas alſo the ſaid Patrick, on the nineteenth of June 1771, at London aforeſaid, in the pariſh and ward aforeſaid, was indebted to the ſaid Edmund in other forty-four pounds of like lawful money, and being ſo indebted as aforeſaid, he the ſaid Edmund afterwards, to wit, on the ſaid nineteenth of June 1771, proſecuted out of the ſaid court of our ſaid lord the king, before the king himſelf (the ſame court then and ſtill being at Weſtminſter aforeſaid, in the ſaid county of Middleſex), a certain other writ of our ſaid lord the king commonly called a *latitat*, directed to the ſheriffs of London [here ſet out laſt-mentioned writ the ſame as the firſt]; which ſaid writ afterwards, and before the return thereof, to wit, on the ſaid firſt of Auguſt 1771, at London aforeſaid,

2d Count, that they defendant view.

aforeſaid, in the pariſh and ward aforeſaid, was delivered by the ſaid J. M. and William Baker, *who then were ſheriffs of London aforeſaid*, to be executed in due form of law, and they the ſaid J. and W. being ſheriffs of London aforeſaid, afterwards and before the return of the ſaid laſt-mentioned writ, to wit, on the ſame day and year laſt aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, *had* the ſaid Patrick *in their view and preſence*, ſo that they the ſaid J. and W. if they had been minded ſo to do, could and might then and there have taken and arreſted the ſaid Patrick by his body, by virtue of that writ; nevertheleſs the ſaid J. and W. not regarding the duty of their ſaid office of ſheriffs of London aforeſaid, but contriving and intending to deceive and defraud the ſaid Edmund, and alſo to hinder the proceedings of the ſaid Edmund in his ſuit againſt the ſaid Patrick, and to deprive him of his remedy for the recovery of the ſaid ſum of money ſo due and owing from him the ſaid Edmund to the ſaid Patrick as laſt aforeſaid, did not take or arreſt the ſaid Patrick by his body, according to the duty of their ſaid office, and the exigency of the laſt-mentioned writ, as they ought to have done, but the ſaid J. and W. and each of them, wilfully neglected the execution of the ſaid writ on the body of the ſaid Patrick, and at the ſaid return of that writ they the ſaid J. and W. and each of them, falſely and deceitfully returned on that writ to the court of our ſaid lord the king, before the king himſelf (the ſame court then and ſtill being at Weſtminſter aforeſaid, in the ſaid county of Middleſex) that the ſaid Patrick was not to be found in their bailiwick, to the great injury and damage of the ſaid Edmund, and the ſaid Patrick did not appear in the ſaid court of our ſaid lord the king, before the king himſelf here, to wit, at Weſtminſter aforeſaid, at the return of the ſaid laſt-mentioned writ, to anſwer to the ſaid Edmund in the ſaid plea laſt aforeſaid; by reaſon whereof, [as before], to the damage, &c. and therefore, &c. Pledges, &c. F. BULLER

TORTS AGAINST PERSONS, OTHER THAN OFFICERS ACTING IN PUBLIC CAPACITIES, RECOGNIZED BY LAW.—AGAINST CARRIERS, NEGLIGENCE.—*See* TORTS FOR NEGLIGENCE, &c. *ante*.

Declaration against the proprietors of a London and Bury ſtage-coach, for ſending a carriage unfit for the journey, which broke down, whereby plaintiff, an outſide paſſenger, had his leg broke.

MIDDLESEX, to wit. Joſhua Maulkins, late of , in the county of S. maltſter, and Humphry Repton, late of , in the county of Norfolk, gentleman, were attached to anſwer Robert Jacques of a plea of treſpaſs on the caſe; and whereupon the ſaid Robert, by A. B. his attorney, complains, that whereas all proprietors of coaches and common carriers, and others keeping coaches, machines, and other carriages for the purpoſe of carrying and conveying paſſengers from place to place within the kingdom for hire, are bound by the law of the land to provide and maintain

maintain good, ſtrong, and able carriages, ſufficient and proper for the purpoſe aforeſaid: And whereas the ſaid J. and H. on the twenty-fifth of March 1775, at Weſtminſter, in the ſaid county of Middleſex, and long before, were proprietors of a certain common coach or carriage going and paſſing from L. to B. in the county of S. and ſo back again from B. aforeſaid to L. aforeſaid, for the carriage of paſſengers for hire; yet the ſaid J. and H. well knowing the premiſes, but wrongfully and injuriouſly intending to hurt and injure the ſaid R. and not regarding their duty in that behalf, afterwards, to wit, on the twenty-fifth of March 1775 aforeſaid, at Weſtminſter aforeſaid, in the ſaid county, neglected to provide and ſend a good, ſtrong, and able carriage fit for the carriage and conveyance of paſſengers from B. aforeſaid to L. aforeſaid, and did then and there ſend a certain carriage on the ſaid journey which was wholly unfit to perform the ſame; by means whereof the ſaid carriage afterwards, to wit, on the ſame day and year aforeſaid, broke down and overturned on the road leading from B. aforeſaid to L. aforeſaid, to wit, at Weſtminſter, in the ſaid county of M. and by reaſon thereof the ſaid Robert, who was then and there a paſſenger on the outſide of the ſaid coach, was thrown therefrom upon the ground, and was thereby greatly bruiſed and hurt, and had his leg broke by the ſaid fall, and ſuffered and underwent great pain, and was wholly diſabled from following and doing his lawful buſineſs for a long ſpace of time, to wit, for the ſpace of one year, and was obliged to lay out and expend, and did lay out and expend a large ſum of money, to wit, the ſum of two hundred pounds, in order to have his leg ſet and cured, and in the procuring of other neceſſary aſſiſtance and attendance during the ſaid time of his illneſs and confinement, to wit, at Weſtminſter aforeſaid, in the county of M. aforeſaid, to the damage of the ſaid Robert of one thouſand pounds, and therefore, &c. F. BULLER.

Trinity Term, 21. Geo. III.

Declaration negligence againſt a maſter and owner of a veſſel, in loſing part of goods belonging to plaintiff, delivered to defendant's care, &c.

FOR that whereas heretofore, to wit, on, &c. in conſideration that the ſaid plaintiff, at the ſpecial, &c. of ſaid defendant, had ſhipped and put on board a certain veſſel called, &c. of the ſaid defendant, then lying at a certain quay called, &c. in the port of B. in the county of S. certain goods and merchandizes, to wit, three caſks containing a certain large quantity, to wit, three tons weight of iron of him ſaid plaintiff of a large value, to wit, &c. to be ſafely and ſecurely carried, tranſported, and carried by water in the ſaid veſſel from the aforeſaid quay in the port of B. to B. in the county of W. upon freight to be therefore paid by him ſaid plaintiff to ſaid defendant, he the ſaid defendant undertook, &c. ſafely, &c. to carry, &c. by water in his aforeſaid veſſel the goods of him ſaid plaintiff from the aforeſaid quay at B. aforeſaid to B. aforeſaid, in the ſaid county of, &c. and there, to wit, at B. aforeſaid, ſafely, &c. to deliver the ſame to the uſe of the ſaid plaintiff: And the

(a) *See* Negligence, *ante*, by Maſters and Owners of Ships.

ſaid plaintiff in fact ſaith, that although the ſaid defendant did, after his ſaid receipt of the ſaid goods, &c. of the ſaid plaintiff for the purpoſe aforeſaid, and before the exhibiting this bill, tranſport, carry, convey, and deliver a part of the aforeſaid goods, &c. of ſaid plaintiff, to wit, one of the aforeſaid caſks, containing one ton weight of the aforeſaid iron, according to the tenor and effect of the ſaid promiſe and undertaking of him ſaid defendant; yet the ſaid plaintiff in fact further ſaith, that the ſaid defendant not regarding, &c. but contriving, &c. to deceive the ſaid plaintiff in this behalf, hath not as yet ſafely, &c. carried, &c. the reſidue of the ſaid goods, &c. of him ſaid plaintiff from the ſaid quay called, &c. at B. aforeſaid to B. aforeſaid, and there ſafely, &c. delivered the ſame to the uſe of the ſaid plaintiff, according to the tenor and effect of the aforeſaid promiſe and undertaking of ſaid defendant, although a reaſonable time for that purpoſe hath long ſince elapſed, and although ſo to do, &c.); (1) *but on the contrary thereof he the ſaid defendant, before the exhibiting, &c. to wit, on, &c. at, &c. ſo negligently and careleſsly managed and conducted himſelf in the premiſes, and took ſo little and ſuch bad care of the ſaid reſidue of the ſaid goods, &c. of the ſaid plaintiff, that the reſidue of the ſaid goods, &c. being of a large value, to wit, of, &c. became and were, and ſtill are wholly loſt to the ſaid plaintiff, to wit, at, &c.* [2d Count ſame as the laſt, only omitting what is in Italic, and inſerting in lieu thereof what is in the margin.] [3d and 4th Counts like the firſt and ſecond; 5th, money had and received; 6th, money laid out. Common concluſion to theſe Counts.]

(1) "but he to perform his ſaid laſt-mentioned promiſe and undertaking in ſuch reſpect hath hitherto wholly refuſed, and ſtill refuſes ſo to do, and the reſidue of the ſaid laſt-mentioned goods being of a large value, &c. are ſtill wholly undelivered to him the ſaid plaintiff."

Declaration at the ſuit of the proprietor of a waggon, againſt a warehouſe keeper, for delivering parcels to other carriers, which had been left with defendant to be delivered to plaintiff to go in his waggon.

CITY OF GLOUCESTER AND COUNTY OF THE SAME CITY, to wit. William North complains of Thomas Harman and George David Norman being in the cuſtody, &c. in a plea of treſpaſs on the caſe; for that ſaid plaintiff, before and at the ſeveral and reſpective times of the committing of the ſeveral and reſpective grievances hereafter mentioned, was, and from thence hitherto hath been, and ſtill is a common carrier of goods and merchandizes in and by a certain waggon of him ſaid plaintiff, from Brecon, in the county of Brecon, to London, by the way of and through the city of Glouceſter, for hire and reward, to wit, at the ſaid city of Glouceſter and county of the ſame city: And whereas ſaid defendants, during all the time aforeſaid, were and ſtill are the keepers and proprietors of a certain warehouſe ſituate in the ſaid city of Glouceſter for the receipt of and ſafe keeping of goods and merchandizes there delivered for the purpoſe of their being delivered by them ſaid defendants, as ſuch keepers of ſaid warehouſe as aforeſaid to ſuch common carriers of goods from ſaid city of G. as the perſon or perſons from time to time delivering ſuch goods and merchandizes have reſpectively directed and ordered, to wit, at, &c. aforeſaid: And ſaid plaintiff in fact ſaith, that he ſaid plaintiff being ſuch

common carrier as aforesaid, and said defendants being such keepers as aforesaid, before the committing of the grievance hereafter next mentioned, to wit, on the day of , in the year of Our Lord , at, &c. aforesaid (1) *one and* did respectively deliver to them said defendants, as such keepers of said warehouse as aforesaid, to be by them delivered to said plaintiff as such common carrier as aforesaid, for the purpose of carriage and conveyance from the said city of G. in and by his aforesaid waggon for hire as aforesaid, to wit, at, &c. aforesaid: And said plaintiff in fact further saith, that although said defendants had and received said goods and chattels so to them delivered as aforesaid for the purpose aforesaid, to wit, at, &c. aforesaid, and although the aforesaid waggon of him said plaintiff did afterwards, to wit, on the day and year aforesaid, and on divers other days and times between that day and the exhibiting, &c. travel and pass through the said city of G. in its way to L. aforesaid, and although said plaintiff was, on those several days and times, ready and willing to have accepted and received said goods and chattels so delivered to the said defendants for the purpose aforesaid, and would have carried and conveyed same in and by his aforesaid waggon, according to the directions of the several and respective persons delivering the same to said defendants as aforesaid; and although said defendants, so being such keepers of the said warehouse as aforesaid, ought to have delivered such goods and chattels to said plaintiff, as such common carrier as aforesaid, and for the purpose aforesaid, according to the directions and orders of the several persons delivering the same to said defendants as aforesaid, to wit, at, &c. aforesaid; yet said plaintiff in fact further saith, that said defendants, so being such keepers of said warehouse as aforesaid, and well knowing all and singular the premises aforesaid, but contriving and intending wrongfully and unjustly to injure and damnify said plaintiff, so being such common carrier as aforesaid, did not on any or either of those several days and times aforesaid, or at any other time whatsoever, deliver said goods and chattels so to them delivered as aforesaid, or any or either of them, or any part thereof to said plaintiff, as such common carrier as aforesaid for the purpose aforesaid, or for any other purpose whatsoever, but wrongfully and unjustly omitted and neglected so to do, and on the contrary thereof, after the delivery of such goods and chattels to them said defendants as aforesaid, to wit, at, &c. aforesaid, wrongfully and unjustly delivered said goods and chattels to other and different carriers of goods and chattels from said city of G. who afterwards carried and conveyed the same; whereby and by means of which said several premises, said plaintiff lost and was deprived of all profit, benefit, and advantage that would have arisen and accrued to him from the carriage of such goods, merchandizes, and chattels in and by his said waggons as aforesaid, to wit, at, &c. aforesaid.

V. LAWES.

W. H.

(1) "divers persons whose names are unknown to said plaintiff,"

INCORPOREAL RIGHTS.

Declaration by a freeman of N. claiming a right of common as freeman reſident and paying ſcot and lot againſt defendant for diſturbing his right by digging pits, erecting houſes, &c. and incloſing, &c.

W. H. *againſt* S. R.

FOR that whereas the town and county of the town of N. is, and from time whereof the memory of man is not to the contrary, hath been an ancient town and borough, in which ſaid town and county of the ſaid town of N. aforeſaid there was, and for all the time aforeſaid, whereof the memory of, &c. there hath been a body politic and corporate known by divers names of incorporation, and amongſt other things by the name of mayor and burgeſſes of the town of N.: And whereas the ſaid body corporate, for all the times whereof the memory of, &c. have had, and have uſed and been accuſtomed to have, and of right ought to have had, and ſtill of right ought to have for each of the ſeveral burgeſſes of the ſaid town occupying and inhabiting in any meſſuage within the ſaid town of N. common of paſture in and upon certain fields called, &c. ſituate and being at, &c. in, &c. for three heads of large cattle, from Lammas-day, according to the ancient computation or old ſtyle heretofore uſed in England, until All Saints day according to the ſame ſtyle then next following in every year at his and their will and pleaſure: And whereas the ſaid plaintiff, before and at the time of the committing of the grievance hereafter next mentioned, to wit, on, &c. and long before, was, and continually from thence hitherto hath been, and ſtill is one of the burgeſſes of, &c. and for all the time laſt-mentioned was poſſeſſed of, occupied, inhabited, and dwelt, and ſtill doth inhabit and dwell in a certain meſſuage within the ſaid borough, and by reaſon of the premiſes he the ſaid plaintiff, during all the time laſt aforeſaid, had and enjoyed, and of right ought to have had and enjoyed, and ſtill of right out to have and enjoy common of paſture in and upon the above-mentioned fields called, &c. at the time and in manner in that behalf above-mentioned: And whereas alſo the ſaid body corporate, for all the ſaid time whereof the memory of, &c. have had, and have uſed and been accuſtomed to have, and of right ought to have, and ſtill of right ought to have for each of the ſeveral burgeſſes of the ſaid town occupying and inhabiting in any meſſuage within the ſaid town, and paying ſcot and lot, common of paſture in and upon the ſaid fields called, &c. ſituate and being at, &c. for three heads of large cattle, from Lammas-day, &c. until, &c. every year at his and their free will and pleaſure: And whereas the ſaid W. before and at the time of the committing of the grievance hereafter mentioned, to wit, on, &c. and long before, was, and continually from thenceforth hitherto hath been, and ſtill is one of the burgeſſes of the ſaid town of N. and for all the time laſt mentioned was poſſeſſed of, occupied, inhabited, and dwelt, and ſtill doth inhabit and dwell in a certain meſſuage within the ſaid borough, and paid and pays ſcot and lot there, and by reaſon of the premiſes he the ſaid W. during all the time laſt aforeſaid, had and enjoyed, and

of

of right ought to have had and enjoyed, and ſtill of right ought to have and enjoy common in and upon the above-mentioned fields called, &c. at the time and in manner above-mentioned: And whereas alſo the ſaid W. before and at the time of the committing of the grievance hereafter next mentioned, to wit, on, &c. and long before, was, and continually from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of a certain meſſuage, with the appurtenances, within the ſaid borough of N. in the ſaid county, and by reaſon of ſuch his poſſeſſion thereof, he the ſaid W. during all the time laſt aforeſaid, hath had and enjoyed, and ought of right to have had and enjoyed, and ſtill of right ought to have and enjoy common of paſture in and upon the above-mentioned fields called, &c. at the time and in manner above-mentioned; And whereas the ſaid W. before and at the time of the committing of the grievances hereafter next mentioned, to wit, on, &c. and long before, was, and continually from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain other meſſuage, with the appurtenances, ſituate and being at, &c. in, &c. and paid and pays ſcot and lot there, and by reaſon of ſuch his poſſeſſion thereof, during all the time laſt aforeſaid, hath had and enjoyed, and of right ought to have had and enjoyed, and ſtill of right ought to have and enjoy common of paſture in and over the ſaid fields at the time and in manner above-mentioned; yet the ſaid defendant, well knowing the premiſes, but deſigning and intending to injure the ſaid plaintiff, and unjuſtly to deprive him of the benefit of his ſaid common of paſture in the ſaid fields, heretofore, and whilſt the ſaid plaintiff was entitled to ſuch common reſpectively as aforeſaid, to wit, on, &c. and on divers other days and times between that day and the day of exhibiting the bill of the ſaid plaintiff in this behalf, at the town and county aforeſaid, did wrongfully and injuriouſly ſink, dig, and make, and cauſed and procured to be ſunk, dug, and made divers, to wit, fifty large pits and holes in the ſaid fields, and wrongfully and injuriouſly dug up, ſubverted, and ſpoiled divers, to wit, three acres of land in the ſaid fields, and built and erected, and cauſed to be built and erected divers, to wit, ten large buildings in the ſaid fields, each building being of the height of two hundred feet, and of the breadth of one hundred feet, in and upon the ſaid fields, and likewiſe placed and made divers hedges, mounds, and fences in and upon the ſaid fields, and alſo wrongfully and injuriouſly dug and made, and cauſed to be dug and made divers large ditches and trenches therein, and alſo wrongfully and injuriouſly incloſed, ſeparated, and divided a great part, to wit, two acres of the ſaid field from the reſidue thereof, and hath wrongfully and injuriouſly kept, maintained, and continued the ſaid large buildings, mounds, hedges, fences, ditches, trenches, pits, and holes ſo erected, made, and dug upon the ſaid fields and the ſaid three acres thereof ſo incloſed, ſeparated, and divided from the reſidue thereof as aforeſaid from the digging, building, and making the

ſame

ſame reſpectively during the times that the ſaid W. had ſuch right of common there as aforeſaid, to wit, until and after the ſaid feaſt of, &c. by reaſon whereof the ſaid W. when he ought to have had common of paſture there as aforeſaid, to wit, from, &c. to, &c. could not have and enjoy his ſaid right of common in the ſaid field in ſo ample and beneficial a manner as he had before been accuſtomed, and during thoſe ſpaces of time ought to have had and enjoyed the ſame, but during all thoſe times was thereby deprived and loſt the benefit and advantage thereof, and the profits which would have accrued to him from the ſame, to wit, at, &c.: And the ſaid W. further ſays, that whilſt he the ſaid W. was entitled to ſuch common reſpectively as aforeſaid, the ſaid S. well knowing the premiſes, but deſigning and intending to injure the ſaid W. and unjuſtly to hinder and deprive him of the benefit of his common of paſture in the ſaid fields, to wit, on, &c. and from thence until the exhibiting the bill of the ſaid plaintiff in this behalf, and during the time when the ſaid W. ought of right to have had and enjoyed his ſaid common of paſture in the ſaid fields, at N. aforeſaid, wrongfully and unlawfully kept and continued upon the ſaid fields, to wit, fifty other large pits and holes, before that time wrongfully and injuriouſly dug, ſunk, and made, and wrongfully and injuriouſly kept and continued upon the ſaid fields divers other buildings, of great length and breadth, to wit, two hundred, &c. which had been before then wrongfully and injuriouſly built, erected, and fixed thereon, and wrongfully and injuriouſly kept and continued upon the ſame fields divers large hedges, mounds, fences, ditches, and trenches, before then wrongfully and injuriouſly made, placed, and ſunk in the ſaid fields, and thereby wrongfully and unlawfully kept and continued a large part, to wit, two acres of the ſaid fields divided and ſeparated from the reſidue thereof; by reaſon of which ſaid ſeveral laſt-mentioned premiſes the ſaid W. when he ought to have had and enjoyed his ſaid common of paſture there, to wit, from, &c. could not have and enjoy his ſaid common of paſture in the ſaid fields in ſo ample and beneficial a manner as he had before then been accuſtomed, and during all that time ought to have had and enjoyed the ſame, but during all thoſe times laſt aforeſaid was deprived of the profit, benefit, and advantage thereof, to wit, at, &c. Damages two hundred pounds. E. WIGLEY.

Trinity Term, 29. Geo III.

Declaration againſt defendant for depaſturing cattle on a common; *per quod*, the plaintiff could not enjoy his right of common as he ought.

DEY *againſt* HANKES. } YORKSHIRE, to wit. J. Dey complains of Samuel Hankes, being, &c.; for that whereas the ſaid plaintiff, on the firſt of January 1788, and before was, and continually from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain ancient meſſuage or cottage, and divers, to wit, one hundred acres of land, with the appurtenances, ſituate and being in the townſhip of Norton, in the ſaid county of

of York, and by reaſon thereof the ſaid plaintiff, during all the time aforeſaid, had, and of right ought to have had, and ſtill of right ought to have common of paſture in and upon a certain large waſte or common called the Great Common, otherwiſe Norton Great Common, ſituate and being in the ſaid townſhip of Norton, for all his commonable cattle, levant and couchant, in and upon the ſaid meſſuage or cottage and land with the appurtenances every year at all times of the year, as to the ſaid meſſuage or cottage and land with the appurtenances belonging and appertaining; yet the ſaid S. well knowing the premiſes, but contriving and maliciouſly intending to injure and prejudice the ſaid plaintiff in this behalf, and to deprive him of the benefit and advantage of his ſaid common of paſture belonging to his ſaid meſſuage or cottage and land with the appurtenances, whilſt he the ſaid plaintiff was ſo poſſeſſed of his ſaid meſſuage or cottage and land with the appurtenances as aforeſaid, and had ſuch right of common of paſture as aforeſaid, to wit, on the ſecond of January 1788, and on divers other days and times between that day and the day of exhibiting the bill of ſaid plaintiff in this behalf, at the townſhip of Norton aforeſaid, wrongfully and injuriouſly eat up, trod down, depaſtured, and ſpoiled the graſs there growing and being in the ſaid waſte or common with divers horſes, mares, geldings, cows, bulls, oxen, heifers, ſheep, and lambs, to wit, one hundred horſes, one hundred mares, &c. &c. whereby the ſaid J. D. could not for a long time, to wit, during all the time laſt aforeſaid, have, uſe, or enjoy his ſaid common of paſture in and upon the ſaid waſte or common in ſo ample and beneficial a manner as he ought to have had and enjoyed the ſame, but during all that time was deprived of great part of the benefit and profit thereof, to wit, at the townſhip of Norton aforeſaid: And whereas alſo [ſame as firſt, except inſtead of claiming the common of paſture on the Great Common, otherwiſe the Norton Great Common, ſay "Dryhurſt Common"]; wherefore the ſaid John ſays that he is injured, and hath ſuſtained damages to the value of twenty pounds; and therefore he brings ſuit, &c.

Plea. General iſſue to the firſt Count. And the ſaid S. as to the reſidue of the ſaid premiſes in the ſaid declaration mentioned, ſaith nothing in bar or preclusion of the ſaid action of the ſaid J. in that behalf, whereby the ſaid J. remains thereof undefended againſt the ſaid S. therefore the ſaid J. ought to recover his damages againſt the ſaid S. by reaſon of the reſidue of the ſaid premiſes in the ſaid declaration mentioned, but becauſe it is unknown whether the ſaid S. will be convicted of the premiſes whereon the ſaid iſſue is above joined or not, and if he ſhall be convicted thereof, it is convenient that there ſhould be but one taxation of damages in this ſuit, let the jury of the damages between the ſaid John and Samuel, by reaſon of the reſidue of the premiſes in the ſaid declaration mentioned, be ſtayed until the ſaid iſſue between the ſaid J. and the ſaid S. ſhall be determined, and as well to try the ſaid iſſue

Plea, gen. iſſue. 2d Ct. *nil dicit.*

iſſue as alſo to enquire what damages the ſaid J. hath ſuſtained by occaſion of the reſidue of the ſaid premiſes in the ſaid declaration mentioned, let a jury come, &c.

This cauſe was tried at ſummer aſſizes 1789, before Judge Wilſon and a ſpecial jury, when a verdict was obtained by defendant on the iſſue, and the damages on the reſidue were aſſeſſed at ſixpence.

Trinity Term, 29. Geo. III.

Declaration againſt defendant for pulling down a bridge over which the plaintiff had a right of way, *per quod*, &c.

KNATCHBULL, WIDOW, *againſt* JOLLIFFE, ESQUIRE. } SOMERSETSHIRE, to wit. J. K. widow, complains of T. S. J. eſquire, being, &c.; for that whereas the ſaid Judith, on the firſt of June 1789, and long before, was, and from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain meſſuage or dwelling houſe, with the appurtenances, called and known by the name of houſe, ſituate, lying, and being in, &c. and by reaſon thereof ſhe the ſaid J. during all the time aforeſaid, hath been uſed and accuſtomed to have, and of right ought to have had, and ſtill of right ought to have for herſelf and ſervants a certain way from her ſaid meſſuage or dwelling houſe upon and over a certain bridge erected and placed over and acroſs a certain rivulet or brook dividing the ſaid pariſh of B. from the pariſh of K. and which ſaid bridge, during all that time, ought to have remained and continued, and ſtill of right ought to remain and continue ſo erected and placed over and acroſs the ſaid rivulet or brook into, through, and over a certain lane, ſituate, lying, and being in the pariſh of K. in the ſaid county, leading from the ſaid bridge unto and into the king's public highway, leading from to in the ſaid county, and ſo back again from the ſaid king's public highway unto, through, and over the ſaid lane unto and over the ſaid bridge to the ſaid meſſuage or dwelling-houſe of the ſaid J. to paſs and repaſs on foot and with horſes, carts, and carriages, at all times, at her free will and pleaſure, and belonging and appertaining to the ſaid meſſuage or dwelling-houſe with the appurtenances; nevertheleſs the ſaid T. S. well knowing the premiſes, but contriving and wrongfully deviſing and intending to hinder and deprive the ſaid J. of the ſaid way, afterwards, and whilſt ſhe the ſaid J. was ſo poſſeſſed of ſaid meſſuage or dwelling-houſe as aforeſaid, to wit, on the ſaid firſt of June 1789, and on divers other days and times, &c. at the pariſh of aforeſaid, in the ſaid county, wrongfully and injuriouſly pulled down, threw drown, proſtrated, demoliſhed, and deſtroyed, and cauſed to be pulled down, thrown down, proſtrated, demoliſhed, and deſtroyed the ſaid bridge, and the ſame wrongfully and injuriouſly kept and continued, and cauſed and procured to be kept and continued ſo pulled down, thrown down, proſtrated, demoliſhed, and deſtroyed from thenceforth hitherto; by reaſon and means of which ſaid premiſes ſhe the ſaid J. during all or any part of that time, could not uſe, have, or enjoy the ſaid way in ſo full and beneficial a manner as ſhe ought to have had and enjoyed the ſame,

but

but during all that time was, and ſhe is wholly hindered and deprived thereof, and during all that time hath wholly loſt all the profit, benefit, and advantage thereof, to wit, at the pariſh of K. aforeſaid, in the ſaid county; to the damage, &c.

H. DAMPIER.

DIXON *againſt* BARRASS AND ANOTHER.

CUMBERLAND, to wit. H. D. complains of W. B. and D. S. being, &c.; for that whereas the ſaid H. on the firſt of March 1787, and long before, was, and continually from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of a certain cloſe called Long Meadow, ſituate, lying, and being in the pariſh of , in the county of C. and the ſaid H. on the firſt of March, in the year aforeſaid, and continually from thenceforth hitherto had, and of right ought to have had for himſelf and his ſervants a way from a certain highway, in the pariſh aforeſaid, in the county aforeſaid, called the Old Way, or way to into, through, and over a certain lane in the pariſh aforeſaid and county aforeſaid unto the ſaid cloſe of the ſaid Henry called Long Meadow, and ſo back again from the ſaid cloſe called Long Meadow to the ſaid highway, to go, return, paſs, and repaſs, on foot, and with cattle, carts, and other carriages, every year, at all times of the year, as they had occaſion, as to the ſaid cloſe called Long Meadow belonging and appertaining; yet the ſaid W. and D. well knowing the premiſes, but wrongfully and injuriouſly contriving and intending to hinder and deprive the ſaid Henry of his ſaid way, while the ſaid Henry was ſo as aforeſaid poſſeſſed of the ſaid cloſe called Long Meadow, to wit, on the thirteenth of May, in the year aforeſaid, wrongfully and injuriouſly obſtructed and ſtopped the aforeſaid way of the ſaid Henry, and placed and fixed a certain gate acroſs the ſame way, and faſtened the ſame with a certain lock, and continued the ſaid gate there ſo fixed and faſtened, whereby the ſaid Henry was wholly deprived of the enjoyment of his ſaid way for a long ſpace of time, to wit, from the thirteenth of May, in the year aforeſaid, until the exhibiting the bill of the ſaid Henry: And whereas the ſaid Henry, on the firſt of March, in the year aforeſaid, and long before, and from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of two other cloſes, to wit, one other cloſe called Cloſe, and the other cloſe called , ſituate, lying, and being in the pariſh aforeſaid, in the county aforeſaid; and the ſaid Henry, on ſaid firſt of March, in the year aforeſaid, and continually from thenceforth hitherto had, and of right ought to have for himſelf and his ſervants a way from the ſaid cloſe called Wood End Cloſe into and acroſs a certain other lane lying between the ſaid cloſe called Wood End Cloſe into and acroſs a certain other lane lying between the ſaid cloſe called the Wood End Cloſe and the ſaid cloſe called , and from thence upon and over a certain bridge and cauſeway to the ſaid cloſe called , and from thence back again upon and over the

Declaration for obſtructing plaintiff's right of way by erecting a gate.

2d Count, for obſtructing plaintiff's way over a bridge and through a lane by erecting hedges and pulling down the bridge.

the ſaid bridge or cauſeway into and acroſs the ſaid laſt-mentioned lane to the ſaid cloſe called Cloſe, to go, return, paſs, and repaſs on foot every year and at all times of the year as they had occaſion to the ſaid two laſt-mentioned cloſes of the ſaid Henry belonging and appertaining; yet the ſaid W. and D. well knowing the premiſes laſt above-mentioned, but wrongfully and injuriouſly contriving and intending to deprive the ſaid Henry of his ſaid laſt-mentioned way, whilſt the ſaid H. was ſo as aforeſaid poſſeſſed of the ſaid laſt-mentioned cloſes, to wit, on the eleventh of May, in the year aforeſaid, obſtructed and ſtopped the ſaid laſt-mentioned way of the ſaid Henry by certain hedges and banks erected and made in and acroſs the ſame, and then and there took up and removed the ſaid bridge and cauſeway, and continued the ſaid laſt-mentioned way ſo obſtructed and ſtopped by the ſaid hedges and banks, and the ſaid bridge ſo taken up and removed for a long ſpace of time, to wit, from the ſaid eleventh of May, in the year aforeſaid, until the exhibiting the bill of the ſaid Henry, and thereby during all that time deprived the ſaid Henry of the enjoyment of his ſaid laſt-mentioned way: And whereas alſo the ſaid Henry, on the firſt of March, &c. [2d Count like the ſecond as to the gravamen, except omitting any mention of the bridge, and claiming the way *on foot and with cattle*]; yet the ſaid defendants, well knowing the premiſes laſt aforeſaid, but wrongfully and injuriouſly contriving and intending to deprive the ſaid Henry of his ſaid laſt-mentioned way, while the ſaid Henry was ſo as aforeſaid poſſeſſed of the ſaid two laſt-mentioned cloſes, to wit, on the twenty-ninth of March in the year aforeſaid, made, ſet up, and placed a certain hedge and bank in and acroſs the ſaid laſt-mentioned way, and continued the ſaid laſt mentioned hedge and bank ſo there ſet up and placed, whereby the ſaid Henry was thereby wholly deprived of the enjoyment of his ſaid laſt-mentioned way for a long ſpace of time, to wit, from thenceforth until the exhibiting the bill of the ſaid Henry: And whereas alſo the ſaid Henry, on the firſt of March, in the year aforeſaid, and long before, was, and ſtill is poſſeſſed of a certain other cloſe called , ſituate, &c. &c. contiguous and next adjoining to a certain other lane leading from a certain farm called , in the pariſh aforeſaid, in the county aforeſaid, to a certain piece or parcel of waſte ground ſituate, lying, and being in the pariſh aforeſaid, in the county aforeſaid, which ſaid laſt-mentioned cloſe, at the north eaſt corner thereof, during all the time laſt aforeſaid, hath lain open towards the laſt mentioned lane, and not ſeparated therefrom by any incloſure: And whereas on the ſaid firſt of March, in the year aforeſaid, and long before, there was, and ſtill ought to be a certain gate placed and fixed at the north eaſt corner of the ſaid laſt-mentioned cloſe acroſs the ſaid laſt-mentioned lane, and ſeparating and dividing the ſaid laſt-mentioned lane from the ſaid piece or parcel of waſte ground, whereby cattle being in the ſaid piece or parcel of waſte ground, have been prevented and hindered, during all that time, from eſcaping and ſtraying out of the ſaid

piece

piece or parcel of waſte ground into the ſaid laſt-mentioned lane, ſo lying contiguous and next adjoining to the ſaid laſt-mentioned cloſe, and from thence into the ſaid laſt-mentioned cloſe; yet the ſaid defendants well knowing, &c. and contriving, &c. whilſt the ſaid Henry was ſo poſſeſſed of the ſaid laſt-mentioned cloſe as aforeſaid, to wit, on the twenty-ſixth of March, in that year, wrongfully and injuriouſly took away and removed the ſaid laſt-mentioned gate from the ſaid north eaſt corner of the ſaid laſt-mentioned cloſe, and continued the ſaid laſt-mentioned gate ſo taken away and removed for a long ſpace of time, to wit, from the twenty-ſixth of March, in the year aforeſaid, until the exhibiting the bill of the ſaid Henry, and by reaſon thereof divers cattle, to wit, horſes, &c. of divers perſons unknown to the ſaid Henry, being in the ſaid piece or parcel of waſte ground, on the ſaid twenty-ſixth of March in the year aforeſaid, and on divers other days, &c. eſcaped and ſtrayed on thoſe ſeveral days and times out of the ſaid piece or parcel of waſte ground into the ſaid laſt-mentioned lane ſo lying contiguous and next adjoining to the ſaid laſt-mentioned cloſe, and from thence into the ſaid laſt-mentioned cloſe, and there on ſeveral days and times were feeding and depaſturing on the graſs of the ſaid Henry there then growing in the ſaid laſt-mentioned cloſe, and then and there did damage to the ſaid laſt-mentioned cloſe, and the ſaid Henry was put to great trouble and expence in and about the driving of the ſaid cattle ſo eſcaped as aforeſaid out of his ſaid laſt-mentioned cloſe; and ſo the ſaid Henry ſaith that he is injured, and hath ſuſtained damages to the value of pounds.

Non cul. pleaded, and on trial at ſummer aſſizes 1789, juror was withdrawn, and cauſe referred.

6. Geo III.

COULTHARD *againſt* ROBINSON. } CUMBERLAND, to wit. J. R. late of in the county aforeſaid, yeoman, was attached to anſwer J. C. of a plea of treſpaſs on the caſe, &c.; whereupon the ſaid plaintiff, by A. B. his attorney, complains, that whereas the ſaid plaintiff, on the firſt day of June 1765, and long before, was, and continually from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of a certain ancient meſſuage, with the appurtenances, called Orchard Houſe, ſituate and being in the pariſh of , in the county aforeſaid, and by reaſon of his poſſeſſion thereof hath been, during all the time aforeſaid, and now is lawfully entitled unto, and of right ought to have had, and ſtill of right ought to have common of turbary, to wit, to cut and dig turfs and peats in, upon, and throughout a certain large tract of ground called , in the pariſh aforeſaid, every year and all times of the year, for neceſſary fuel to be ſpent, burnt, and conſumed by the ſaid J. in the ſaid ancient meſſuage with the appurtenances belonging and appertaining: And whereas the ſaid J. ſo being poſ-

Declaration againſt defendant for preventing plaintiff from enjoying his common of turbary, by hindering plaintiff and his ſervants by force from entering on the common.

ſeſſed of the ſaid ancient meſſuage or tenement with the appurtenances as aforeſaid, on the firſt of July, in the year aforeſaid, at the pariſh aforeſaid, employed and directed divers of his ſervants to cut and dig turfs and peats for the ſaid J. in the ſaid tract of ground called Waterhead Common, otherwiſe Waterhead Fell, and his ſaid ſervants had begun and attempted to dig turfs and peats for the ſaid plaintiff for neceſſary fuel to be ſpent, burnt, and conſumed by him in his ſaid ancient meſſuage with the appurtenances, and would then and there have further proceeded in cutting and digging turfs and peats there for the ſaid plaintiff for the purpoſe aforeſaid if the ſaid ſervants had not been prevented and hindered from ſo doing by the ſaid defendant; nevertheleſs the ſaid defendant, well knowing the premiſes, but maliciouſly deviſing and contriving to injure the ſaid plaintiff in this behalf, and to prevent and hinder the ſaid ſervants from further proceeding in the ſaid work and employment, whilſt the ſaid plaintiff was ſo poſſeſſed of his ſaid ancient meſſuage as aforeſaid, and whilſt his ſervants were ſo employed as aforeſaid, to wit, on the ſame day and year laſt aforeſaid, at the pariſh aforeſaid, without any lawful authority *in that behalf, with force and arms, obſtructed, hindered, and prevented the ſaid ſervants of the ſaid plaintiff from further meddling, endeavouring, and proceeding to cut and dig turfs and peats in the ſaid* tract of ground called Waterhead Fell for the ſaid plaintiff to be ſpent, burnt, and conſumed by him in his ſaid ancient meſſuage with the appurtenances, as they then and there could and would otherwiſe have done, but the ſaid ſervants of the ſaid plaintiff were then and there compelled and forced by the ſaid defendant to forbear and deſert from that work and employment, whereby the ſaid plaintiff not only loſt and was deprived of the ſervice for the ſpace of ſix hours then next following, but was alſo greatly obſtructed and diſturbed in the enjoyment of his ſaid common of turbary, and was prevented and hindered from enjoying the ſame in ſo ample and beneficial a manner as he otherwiſe would and ought to have done: And whereas alſo the ſaid plaintiff, on the firſt of June 1765 aforeſaid, and long before, was, and continually from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of a certain other ancient meſſuage, with the appurtenances, called , ſituate, &c. and by reaſon of his poſſeſſion thereof hath been, during all the time aforeſaid, and now is lawfully entitled unto, and of right ought to have had, and ſtill of right ought to have common of turbary, to wit, to cut, dig, and take turfs and peats in, upon, and throughout a certain other large tract of ground called Waterhead Common, otherwiſe Waterhead Fell, in the pariſh aforeſaid, every year and at all times of the year, for neceſſary fuel to be ſpent, burnt, and conſumed by the ſaid plaintiff in his ſaid laſt-mentioned meſſuage with the appurtenances, as to the ſame laſt-mentioned meſſuage with the appurtenances belonging and appertaining: And whereas the ſaid J. being ſo poſſeſſed of his ſaid laſt-mentioned ancient meſſuage with the appurtenances as aforeſaid, on the firſt of July 1765, at

2d Count, varying the manner of the Tortdone.

at the parish aforesaid, had begun to cut and dig turfs and peats, and was cutting and digging turfs and peats in and upon the said tract of ground called Waterhead Common, otherwise Waterhead Fell, for necessary fuel to be burnt, spent, and consumed by him in his said last-mentioned messuage with the appurtenances, and was using his last-mentioned common of turbary, and then and there intended to have proceeded further in cutting and digging of turfs and peats there for the purpose last aforesaid if he had not been prevented and hindered from so doing by the said defendant; nevertheless the defendant, well knowing the last-mentioned premises, but maliciously contriving and devising to injure the said plaintiff in this behalf, and to obstruct and disturb him in the use and enjoyment of his last-mentioned common of turbary, whilst the said plaintiff was so possessed of his said last-mentioned ancient messuage with the appurtenances as aforesaid, and whilst the said plaintiff was so cutting and digging turfs and peats in the said last-mentioned tract of ground called Waterhead Common, otherwise Waterhead Fell, as aforesaid, for the purpose last aforesaid, to wit, on the first of July 1765. at the parish aforesaid, without any lawful authority in that behalf, *wilfully and maliciously placed, fixed, and interposed a certain fork called an arm fork, which he the said defendant then and there had and held in his hands, opposite to and against the said spades and other instruments which* the said plaintiff then and there used for the purpose of cutting and digging of turfs and peats in and upon the said last-mentioned tract of ground called Waterhead Common, otherwise Waterhead Fell, as aforesaid, in such manner that the said plaintiff could not cut and dig any more turfs and peats there as he otherwise could and would have done, but the said plaintiff was then and there compelled and obliged thereby to forbear and desist from that work, whereby the plaintiff was greatly obstructed and disturbed in the enjoyment of his last-mentioned common of turbary, and was prevented and hindered from enjoying the same in so ample and beneficial a manner as he otherwise would and ought of right to have done: And whereas also the said J. on the first of June, in the year aforesaid, and long before, was, and from thenceforth continually hitherto hath been, and now is lawfully possessed of one other ancient messuage, with the appurtenances, called Orchard House, situate and being in the parish of , in the county aforesaid, and by reason of his possession thereof hath been, during all the time aforesaid, and now is lawfully entitled to, and of right ought to have the *privilege and benefit of cutting, digging, and taking peats in, upon, and* throughout a large tract of ground called Waterhead Common, otherwise Waterhead Fell, in the parish aforesaid, every year and at all times of the year, for necessary fuel to be spent, burnt, and consumed by the said plaintiff in the said last-mentioned ancient messuage with the appurtenances, as to the said last-mentioned ancient messuage with the appurtenances belonging and appertaining: And whereas the said plaintiff, being so possessed of the said last-mentioned ancient messuage with the appurtenances

3d Count, mesne, general.

as aforeſaid, on the firſt of July, in the year aforeſaid, at the pariſh aforeſaid, employed and directed divers of his ſervants to cut and dig peat for the ſaid plaintiff in the ſaid tract of ground called, &c. and his ſaid ſervants had begun and attempted to dig and cut peat there for the ſaid plaintiff for neceſſary fuel to be ſpent, burnt, and conſumed by him in the ſaid laſt-mentioned ancient meſſuage with the appurtenances, and would then and there have further proceeded in cutting and digging of peat thereof for the ſaid plaintiff for the purpoſe laſt aforeſaid if the ſame ſervants had not been prevented and hindered from ſo doing by the ſaid plaintiff; nevertheleſs the ſaid defendant, well knowing the laſt-mentioned premiſes, but maliciouſly contriving and deviſing to injure the ſaid plaintiff in this behalf, and to prevent and hinder his ſaid laſt-mentioned ſervants from further proceeding in their ſaid laſt-mentioned work and employment, while the ſaid plaintiff was ſo poſſeſſed of his ſaid laſt-mentioned ancient meſſuage with the appurtenances as aforeſaid, and whilſt his ſaid laſt-mentioned ſervants were ſo employed as aforeſaid, to wit, on the ſame day and year laſt aforeſaid, in the pariſh aforeſaid, without any lawful authority in that behalf, with force and arms, obſtructed, hindered, and prevented the ſame ſervants to cut and dig peat in the ſaid tract of ground called for the ſaid plaintiff, to be ſpent, burnt, and conſumed by him in his ſaid laſt-mentioned ancient meſſuage with the appurtenances as they then and there otherwiſe could and would have done, but the ſaid ſervants of the ſaid plaintiff were then and there compelled and forced by the ſaid John, to forbear and deſiſt from that work and employment, whereby he ſaid plaintiff not only loſt and was deprived of the ſervice of the ſaid laſt-mentioned ſervants for a long ſpace of time, to wit, for the ſpace of ſix hours then next following, but was alſo greatly obſtructed and diſturbed in the enjoyment of his ſaid privilege and benefit of cutting and digging peat in the ſaid tract of ground called, &c. for the purpoſe laſt aforeſaid, and was prevented and hindered from enjoying the ſame in ſo ample and beneficial a manner as he otherwiſe could and ought to have done; wherefore the ſaid plaintiff ſaith he is injured, &c. A. CHAMBRE.

Declaration againſt the rector of a pariſh for not repairing a part way leading to plaintiff's houſe, which he is bound by preſcription to do in reſpect of his glebe.

SUSSEX, to wit. Joſeph Marlett, eſquire, complains of the reverend Edward Frederett, clerk, being, &c.; for that whereas the ſaid J. on the firſt day of January, A. D. 1777, and long before, was, and from thence hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain meſſuage or dwelling houſe commonly called Manthem Houſe, and divers, to wit, one hundred acres of land thereunto belonging, ſituate and being in the pariſh, &c. in the ſaid, &c. and by reaſon thereof he the ſaid J. during all the time aforeſaid, of right ought to have had, and ſtill of right ought to have *a certain way* from a certain gate during all the time aforeſaid erected, ſtanding, and being in a certain lane called , in, &c. aforeſaid, the ſaid gate being near unto a certain

tain road or highway leading from the ſaid gate to a certain place called Broodbridge Heath, in, &c. aforeſaid, unto the ſaid meſſuage and land of the ſaid Joſeph, and from thence back again from the ſaid meſſuage and land of the ſaid Joſeph in, along, and through the ſaid lane called to the ſaid gate, to go, return, paſs, and repaſs on foot and on horſeback, and with his waggons, horſes, carts, and other carriages, every year and at all times of the year, at his free will and pleaſure: And whereas the ſaid Edward, during all the time aforeſaid, was, and ſtill is rector of the rectory of the pariſh church of Hitchinfield, otherwiſe Itchinfield, in, &c. aforeſaid, and as ſuch in right of his ſaid rectory was ſeiſed in his demeſne as of fee of and in divers, to wit, one hundred acres of glebe land, ſituate, lying, and being in, &c. that is to ſay, a great part thereof, to wit, one half thereof on one ſide of the ſaid lane, and the reſidue thereof on the other ſide of the ſaid lane: And the ſaid J. further ſaith, that he *the ſaid E. and all other the rectors of the ſaid rectory for the time being, from time whereof the memory of man is not to the contrary, until the neglect thereof hereinafter mentioned, by reaſon of ſuch their ſeizin of the ſaid glebe land have maintained and repaired, and have been uſed and accuſtomed to maintain and repair, and during all the time aforeſaid of right ought to have maintained and repaired, and ſtill of right ought to maintain and repair the ſaid way for a certain* length, to wit, for the length of one hundred and forty-three rods, that is to ſay, from the ſaid gate towards the ſaid meſſuage and land of the ſaid J. unto a certain poſt ſtanding and being on the weſt ſide of the ſaid lane at the corner of a certain cloſe called Aſhford, in, &c. that is to ſay, at the ſaid diſtance of one hundred and forty three rods from the ſaid gate, when, and ſo often as need or occaſion hath been or required, or may be or require; yet the ſaid E. well knowing, &c. but contriving, &c. the ſaid Joſeph in this behalf, and to deprive him of the uſe, benefit, and advantage of his ſaid way, he the ſaid J. in fact further ſaith, that whilſt he the ſaid J. was ſo poſſeſſed of his ſaid meſſuage or dwelling-houſe and land, with the appurtenances, and whilſt he the ſaid E. was ſo rector of the ſaid rectory and ſeiſed of the aforeſaid glebe land, to wit, on, &c. aforeſaid, the ſaid part of the ſaid way before particularly mentioned was ruinous, founderous, miry, broken, and in great decay for want of due reparation and amendment thereof, he the ſaid E. wrongfully and unjuſtly ſuffered and permitted to be and continue ſo ruinous, &c. from thence for a long time, to wit, hitherto, and the ſaid part of the ſaid way is ſtill ruinous, &c. for want of due reparation and amendment thereof by the ſaid Edward; by means of which ſaid ſeveral premiſes he the ſaid J. during all that time there, could not have the uſe or enjoyment of his ſaid way in ſo large, ample, and beneficial a manner as he during the time laſt aforeſaid of right ought to have had and enjoyed the ſame, but by means of the ſaid premiſes hath loſt and been deprived of the greater part of the uſe, benefit, and advantage thereof, to wit, at, &c. aforeſaid. [2d Count, one hundred and thirteen rods to a

gate on the weſt ſide of the ſaid lane, leading into a cloſe called Aſhford, in the pariſh aforeſaid. 3d Count claims a way to the plaintiff's premiſes, and without ſaying who is to repair, ſhews that the defendant with horſes, &c. had uſed the ſaid way, and damaged and rendered it impaſſable. 4th and 5th Counts like the two firſt, but adding that the defendant had a right to uſe the ſaid part of the ſaid way as well as the ſaid plaintiff, and by reaſon thereof, and of the ſeiſin of his glebe land, he ought to repair, and that he uſed but had not repaired the ſaid way.

I. MORGAN.

Hilary Term, 29. Geo. III.

Declaration for obſtructing plaintiff in the uſe of his pew, by breaking off the lock and affixing another.

SUSSEX, to wit. J. M. late of, &c. was attached to anſwer J. R. of, &c. that whereas the ſaid J. R. on, &c. and continually from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain meſſuage or dwelling houſe, with the appurtenances, ſituate, lying, and being in the pariſh of, &c. in which ſaid meſſuage or dwelling-houſe he the ſaid J. R. hath, during all the time aforeſaid, inhabited and dwelt, and ſtill doth inhabit and dwell with his family, to wit, at, &c. and by reaſon thereof the ſaid James R. during all the time aforeſaid, had, and of right ought to have had, and ſtill of right ought to have for himſelf and his family inhabiting in the ſaid meſſuage or dwelling-houſe with the appurtenances, the uſe and benefit of a certain pew in the pariſh church of, &c. *to wit, a certain pew ſituate in the little north aiſle of the ſaid church*, to hear and attend divine ſervice celebrated in the ſaid church from time to time whenever divine ſervice hath been during that time celebrated in the ſaid church, as belonging to the ſaid meſſuage or dwelling-houſe with the appurtenances; nevertheleſs the ſaid J. M. well knowing the premiſes, but contriving and wickedly and maliciouſly deſigning and intending to injure the ſaid J. R. and to deprive him of the uſe and benefit of the ſaid pew, whilſt he the ſaid J. R. ‡ was ſo poſſeſſed of and inhabited his ſaid meſſuage or dwelling houſe, and poſſeſſed of the ſaid pew thereto appertaining, to wit, on, &c. at, &c. with force and arms, broke, wrenched, and tore off a certain lock then and there affixed to the door of the ſaid pew of the ſaid J. R. and with which the ſame was then and there faſtened, and then and there took poſſeſſion of the ſame, and put and affixed to the door of the ſaid pew a certain other lock of him the ſaid J. M. and from thence hitherto hath excluded the ſaid J. R. from the uſe and enjoyment of his ſaid pew, and hath at divers times during the time aforeſaid, when divine ſervice hath been celebrated in the ſaid church, ſat in the ſaid pew, and hath during theſe times prevented and hindered the ſaid J. R. and family at theſe times inhabiting the ſaid meſſuage or dwelling-houſe from ſitting in the ſaid pew for the purpoſe aforeſaid, whereby the ſaid J. R. could not have or enjoy the ſaid pew for himſelf and his family inhabiting the ſaid meſſuage or dwelling-houſe during the time aforeſaid, but

hath

hath during the time aforesaid been deprived of the use and benefit thereof, and hath been otherwise greatly disturbed, disquieted, and molested in the use and enjoyment thereof, to wit, at, &c.: And whereas, &c. [go on with this Count same as the first till you come to this mark ‡, only omitting what is in Italic, then proceed as follows], inhabited the said last-mentioned messuage or dwelling-house with his family, to wit, on, &c. and on divers other days and times between that day and the day of suing out the original writ of the said J. R. in this behalf, when divine service was performed in the said church, did sit in the said last-mentioned pew without the licence and consent, and against the will of the said J. R. and did then and there obstruct, hinder, and exclude the said J. R. and his family then inhabiting the said last-mentioned messuage or dwelling-house from sitting in and having the use of the said last-mentioned pew, whereby the said J. R. could not have and enjoy the use and benefit of the said last-mentioned pew for himself and family so inhabiting the said messuage or dwelling-house last-mentioned to attend and hear divine service performed in the said church upon the days and at the times aforesaid, but by reason thereof during all the time aforesaid hath been totally deprived of all the use and benefit of the said last-mentioned pew, to wit, at, &c.; whereupon the said J. R. saith that he is injured, and hath sustained damage to the value of one hundred pounds; and therefore he brings his suit, &c.

2d Count, stating in pew and excluding plaintiff.

LINCOLNSHIRE, to wit, Ann Hill, late of, &c. was attached by his majesty's writ of privilege issuing out of the court here, to answer unto William Pennell, gentleman, one of the attornies of his majesty's court of the bench, according to the liberties and privileges of the said court for such attornies, and other ministers of the said court from time immemorial used and approved of, in a plea of trespass on the case, &c.; and thereupon the said William in his own proper person complains, that whereas he the said William heretofore, to wit, on, &c. was and from thence hitherto hath been, and still is, seised in his demesne as of fee of and in a certain ancient messuage or dwelling-house, with the appurtenances, situate and being at, &c. and near to a certain close there called the George Inn Yard, during the time aforesaid, in the possession of the said Ann, in which said dwelling-house he the said William, during all the time aforesaid, resided and dwelt, and still doth reside and dwell; and the said William, and all those whose estate he so had, and now hath, of and in the said messuage or dwelling-house, with the appurtenances, for the time being, from time whereof the memory of man is not to the contrary, have had and have used, and been accustomed to have, and ought to have had, and still of right ought to have had, and still of right ought to have, a certain way from the said messuage for the said William into, through, and along a certain part of the said close there called the George Inn Yard, unto and into a certain common king's highway there, called the Waring Road, and

Declaration against defendant, for erecting a gate across a way which led from the plaintiff's house to the king's highway.

ſo back again from the ſaid highway into, through, and along the ſaid part of the ſaid cloſe there, called the George Inn Yard, unto the ſaid meſſuage of the ſaid William, to go, return, paſs, and repaſs, by himſelf and themſelves, and his and their ſervants, on foot and with his and their horſes, carts, and carriages, loaden and unloaden, at all times of the year, at his and their free will and pleaſure, as belonging and appertaining to the ſaid meſſuage, with the appurtenances, of the ſaid William; yet the ſaid Ann, well knowing the premiſes, but contriving and maliciouſly intending, wrongfully and unjuſtly, to hurt, injure, and prejudice the ſaid William, and to deprive him of the uſe, benefit, and advantage of his ſaid way, and to incommode and annoy him in the poſſeſſion, uſe, and occupation of his ſaid meſſuage, with the appurtenances, whilſt he the ſaid William was ſo ſeiſed thereof, and whilſt he the ſaid William ſo reſided and dwelt in the ſaid meſſuage or dwelling-houſe, and was ſo entitled to ſuch way as aforeſaid, on, &c. at, &c. wrongfully and unjuſtly put up, &c. and wrongfully and unjuſtly cauſed and procured to be put up, &c. in and acroſs a certain part of the ſaid way in the ſaid cloſe there, called the George Inn Yard, a certain gate, and then and there wrongfully and unjuſtly locked, ſhut, and faſtened up the ſaid gate, and then and there, and from thence hitherto wrongfully and unjuſtly kept and continued, and cauſed and procured to be kept and continued, and ſtill doth keep and continue the ſaid gate ſo there wrongfully and unjuſtly put up, fixed, and placed, and ſo locked, ſhut, and faſtened as aforeſaid, upon and acroſs the ſaid way, and hath thereby, during all that time, wrongfully and unjuſtly obſtructed the ſaid way, ſo that he the ſaid William could not have and enjoy the ſame as during all that time he otherwiſe would, and of right ought to have done, but was thereby hindered and prevented from ſo doing, and wholly loſt the uſe of his ſaid way, and alſo was and hath been, for and during all that time, and ſtill is put to great and additional trouble and expence in the conveyance of coals, corn, hay, &c. and other neceſſary things, to and from his ſaid meſſuage by another and different way, and forced and obliged to carry the ſame through his ſaid meſſuage and dwelling houſe, whereby the ſaid meſſuage or dwelling-houſe was very much dirtied, daubed, and ſpoiled, and the ſaid William was and is thereby greatly incommoded, annoyed, and diſturbed in the poſſeſſion, uſe, and occupation of his aforeſaid meſſuage and dwelling-houſe, to wit, at, &c.: And alſo whereas the ſaid William heretofore, to wit, on, &c. was, and from thenceforth hitherto hath been, and ſtill is, ſeiſed in his demeſne as of fee of and in a certain other ancient meſſuage *or dwelling-houſe*, with the appurtenances, ſituate and being, at, &c. in, &c. and near to a certain other cloſe there, called the George Inn Yard, during the time laſt aforeſaid, in the poſſeſſion of the ſaid Ann, *in which ſaid laſt-mentioned meſſuage or dwelling-houſe, he the ſaid William, during all that time reſided and dwelt, and ſtill doth reſide and dwell*; and the ſaid William, and all thoſe whoſe eſtate

Add Court, erecting a gate acroſs.

eſtate he ſo had and now hath of and in the ſaid laſt-mentioned meſſuage *or dwelling-houſe*, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, &c. [as before] a certain way from the ſaid laſt-mentioned meſſuage of him the ſaid William, into, through, and (1) *acroſs* a certain part of the ſaid laſt-mentioned cloſe there, called the George Inn Yard, unto and into a certain common king's highway there, called the Waring Road, and ſo back again from the ſaid highway into, through, and along the ſaid part of the ſaid laſt-mentioned cloſe there, called the George Inn Yard, unto the ſaid laſt-mentioned meſſuage of the ſaid William to go, return, paſs, and repaſs, &c. &c. at his and their free will and pleaſure, as belonging and appertaining to the ſaid laſt-mentioned meſſuage, with the appurtenances, of him the ſaid William; yet the ſaid Ann, well knowing the premiſes laſt aforeſaid, but contriving, &c. whilſt he the ſaid William was ſo ſeiſed thereof, *and whilſt he the ſaid William ſo reſided and dwelt in the ſaid laſt-mentioned meſſuage or dwelling-houſe*, and was ſo entitled to the ſaid laſt-mentioned way as aforeſaid, to wit, on, &c. (2) *and from thence hitherto kept and continued, and cauſed and procured to be kept and continued, and ſtill doth keep and continue a certain other gate, before then wrongfully and unjuſtly put up, fixed, and placed upon and acroſs the ſaid way in the ſaid laſt-mentioned cloſe, called the George Inn Yard, and then and there ſhut up, locked, and faſtened, ſo there wrongfully and unjuſtly fixed up and placed, ſo there ſhut up, locked and faſtened as aforeſaid, and thereby, during all that time wrongfully and unjuſtly blocked up and obſtructed the ſaid laſt-mentioned way, and hindered and prevented the ſaid William from having and enjoying the ſame as* during all that time he otherwiſe would, &c. &c. [finiſh as the firſt Count]: And alſo whereas, &c. &c. [finiſh this Count ſame as the ſecond, omitting what is in Italic and inſerting in lieu thereof what is in the margin]: And alſo whereas the ſaid William heretofore, to wit, on, &c. was, &c. poſſeſſed of and in a certain other meſſuage, with the appurtenances, ſituate and being at, &c. near to, &c. there called, &c. in the poſſeſſion of the ſaid Ann, and by reaſon thereof he the ſaid William, during all the time laſt aforeſaid ought to have had, and ſtill of right ought to have a certain way from the ſaid laſt-mentioned meſſuage of him the ſaid William, with the appurtenances, into, through, and along a certain part of the ſaid laſt mentioned cloſe there, called, &c. unto and into a certain common king's highway there, called, &c. and ſo back again from the ſaid highway into, through, and along the ſaid part of the ſaid laſt-mentioned cloſe there, called, &c. unto the ſaid laſt-mentioned meſſuage of the ſaid William, to go, return, &c. &c. at his and their free will and pleaſure, as belonging and appertaining

(1) "along"

(2) "wrongfully and unjuſtly put up fixed, and placed upon and acroſs a certain part of the ſaid laſt-mentioned way in the ſaid cloſe, called the George Inn Yard, a certain other gate, and then and there, and from thence hitherto wrongfully kept and continued, and ſtill doth keep the ſaid gate ſo there wrongfully put up, upon and acroſs the ſaid laſt-mentioned way, and during that time to wit, on, &c. and on divers other days between that day and the ſuing out of the writ of the ſaid William againſt the ſaid Ann, wrongfully and unjuſtly locked the ſaid gate, and cauſed and procured the ſame to be locked, and wrongfully and unjuſtly cauſed and procured the ſaid laſt-mentioned gate to be kept ſo locked for a long ſpace of time, to wit, for the ſpace of twenty hours on each and every of thoſe days, and thereby on thoſe days, the ſame being proper and reaſonable times for uſing the ſaid laſt-mentioned way, wrongfully and unjuſtly obſtructed the ſaid way, and hindered and prevented the ſaid William from having and enjoying the ſame as,"

appertaining to the ſaid laſt-mentioned meſſuage of him the ſaid William, with the appurtenances; yet the ſaid Ann, well knowing the premiſes, but contriving, &c. the ſaid William, and to deprive him of the uſe and advantage of his ſaid laſt-mentioned way, and to incommode and annoy him in the poſſeſſion, uſe, and occupation of his ſaid laſt-mentioned meſſuage, with the appurtenances, whilſt he the ſaid William was ſo poſſeſſed thereof as aforeſaid, and whilſt he was ſo entitled to ſuch way as aforeſaid, to wit, on, &c. wrongfully and unjuſtly put up, &c. and cauſed to be put up, fixed, and placed in, upon, and acroſs a certain part of the ſaid laſt-mentioned way in the ſaid cloſe called the George Inn Yard, and there locked, ſhut, and faſtened a certain other gate, and then and there, and from thence hitherto wrongfully and unjuſtly kept and continued, and ſtill doth keep and continue the ſaid gate ſo there wrongfully and unjuſtly put up, &c. and ſo locked, ſhut, and faſtened as aforeſaid, in, upon, and acroſs the ſaid laſt-mentioned way, and hath, during all that time, wrongfully and unjuſtly obſtructed the ſaid laſt-mentioned way, ſo that the ſaid William could not have or enjoy the ſame as during all that time he otherwiſe would, and of right ought to have done, but was thereby hindered and prevented from ſo doing, and wholly loſt the uſe of his ſaid laſt-mentioned way, to wit, at, &c.: And alſo whereas the ſaid William heretofore, to wit, on, &c. was, and from thence hitherto hath been, &c. and near to a certain other cloſe then called, &c. in the poſſeſſion of, &c. and by reaſon thereof he the ſaid William, during all the time laſt aforeſaid, of right ought, &c. &c. and ſo back again from the ſaid highway, &c. at his and their free will, &c.; yet the ſaid Ann, well knowing the premiſes laſt aforeſaid, but contriving, &c. the ſaid William, and to deprive him of the uſe, benefit, and advantage of his ſaid laſt-mentioned way, and to incommode and annoy him in the poſſeſſion, uſe, and occupation of his ſaid laſt-mentioned meſſuage, with the appurtenances, whilſt he the ſaid William was ſo poſſeſſed thereof, and whilſt he the ſaid William was ſo entitled to the ſaid laſt-mentioned way as aforeſaid, to wit, on, &c. and on divers other days and times between that day and the day of ſuing out the original writ of the ſaid William againſt the ſaid Ann, wrongfully and unjuſtly kept and continued, and cauſed to be kept and continued ſhut up, locked, and faſtened a certain other gate before then put up, fixed, and placed upon and acroſs the ſaid laſt-mentioned way of the ſaid William in the ſaid laſt-mentioned cloſe called the George Inn Yard, and thereby, in and during thoſe ſeveral days and times, and at each and every of thoſe times, the ſame being then and there reaſonable and proper times, and of them being then and there a reaſonable and proper time for uſing the ſaid laſt-mentioned way, wrongfully and unjuſtly blocked up and obſtructed the ſaid way, ſo that the ſaid William could not uſe the ſame, and then and there hindered and prevented the ſaid William from having and enjoying the ſame as at and during all thoſe times he otherwiſe would and of right ought to have done,

5th Count, fixing gate in George innyard.

to

to wit, at, &c.: And alſo whereas the ſaid William heretofore, to wit, on, &c. was, &c. lawfully poſſeſſed of and in a certain cloſe of land there called the Yard, otherwiſe the Stable Yard, with the appurtenances, ſituate and being at, &c. &c. near, &c. and by reaſon thereof he the ſaid William, during all the time laſt aforeſaid of right ought to have a certain way from the ſaid cloſe of the ſaid William, with the appurtenance, into, through, and along a certain part of the ſaid laſt-mentioned cloſe there called the George Inn Yard unto and into a certain common, &c. and ſo back again from, &c. to go, &c. at his and their free, &c. as belonging and appertaining to the ſaid cloſe of the ſaid William, with the appurtenances; yet the ſaid Ann, well knowing the premiſes, but contriving, &c. the ſaid William, and to deprive him of the uſe, benefit, and advantage of his ſaid laſt-mentioned way, and to incommode and annoy him in the poſſeſſion, uſe, and occupation of his ſaid cloſe, with the appurtenances, whilſt he the ſaid William was ſo poſſeſſed thereof, and was ſo entitled to ſuch way as aforeſaid, to wit, on, &c. wrongfully and unjuſtly kept and continued, and cauſed and procured to be kept and continued ſhut, &c. a certain other gate before then put up, &c. in, upon, and acroſs the ſaid laſt-mentioned way of the ſaid William in the ſaid cloſe called the George Inn Yard, and thereby, during all that time, wrongfully and unjuſtly blocked up and obſtructed the ſaid laſt-mentioned way of the ſaid William, ſo that the ſaid William could not during that time uſe and enjoy the ſame, and then and there during all that time hindered and prevented the ſaid William from having and enjoying the ſame as he otherwiſe would, and of right ought to have done during the ſaid laſt-mentioned time; whereby he the ſaid William, during all that time, loſt and was deprived of the uſe, benefit, and advantage of the ſaid laſt-mentioned way, to wit, at, &c.; whereby he the ſaid William ſaith he is injured and hath ſuſtained damage to the amount of two hundred pounds, and therefore he brings his ſuit. THOMAS DAVENPORT.

6th Count, in ſtable yard.

EDWARDS AND ANOTHER *againſt* JENKINS AND ANOTHER.

CARDIGANSHIRE, to wit. Thomas Edwards and James Edwards complain of David Jenkins and Catherine Jenkins, being, &c.; for that whereas the ſaid Thomas and James, on the thirtieth of May 1787, and long before, were, and continually from that time hitherto have been, and ſtill are lawfully poſſeſſed of and in a certain ancient water corn mill, with the appurtenances, ſituate, ſtanding, and being within the manor and lordſhip of Hampeter Pont Stephen, in the ſaid county of Cardigan; and the ſaid Thomas and James being ſo poſſeſſed of the ſaid mill, with the appurtenances, by reaſon thereof, during all the time aforeſaid, have had, and of right ought to have, for all the time aforeſaid, toll of all *corn, grain, and* malt ground in the ſame mill: And whereas the ſaid David and Catherine, on the ſame day and year aforeſaid, and long before, were, *quod* plaintiffs loſt the profit he ought to have had from grinding the griſt. Several Counts, varying the nature of defendants obligation to the mill.

Declaration by the poſſeſſor of an ancient water corn mill in the manor of A. and to which defendants were bound, in conſequence of a meſſuage they poſſeſſed within the manor, againſt defendants, for grinding their griſt which they uſed and ſpent within the manor at another mill, *per*

and

and continually from thenceforth hitherto have been, and ſtill are, poſſeſſed of and in a certain meſſuage or dwelling-houſe, with the appurtenances, ſituate, ſtanding, and being within the manor or lordſhip aforeſaid, in which ſaid meſſuage or dwelling-houſe the ſaid defendants did for all the time aforeſaid, inhabit and dwell, and ſtill inhabit and dwell, and by reaſon thereof, for all the time aforeſaid, ought to have ground, and ſtill of right ought to grind at the aforeſaid mill all their *corn, grain, and* malt which after the grinding thereof had been or ſhould be uſed and ſpent in their ſaid meſſuage or dwelling-houſe, and to pay the ſaid Thomas and James for the grinding thereof a reaſonable toll; nevertheleſs the ſaid defendants, well knowing the premiſes, but deſigning and maliciouſly intending unjuſtly to injure and damnify the ſaid plaintiffs in this behalf, and to hinder and deprive them of the profit and advantages which ought to have accrued to them from and by reaſon of the grinding of the ſaid *corn, grain, and* malt of the ſaid defendants by them after the grinding thereof within the time aforeſaid, uſed and ſpent in their ſaid meſſuage or dwelling-houſe, to wit, on the thirtieth day of May, 1787, and on divers other days and times between that day and the day of exhibiting the bill of the ſaid plaintiffs, at Lampeter Pont Stephen aforeſaid, in the ſaid county, did withdraw their griſt from the ſaid mill of the ſaid Thomas and James, and did grind and cauſe to be ground a large quantity of *corn, grain, and* malt, that is to ſay, *one thouſand quarters of corn, one thouſand quarters of grain, and* one hundred quarters of malt by them, after grinding thereof, in their ſaid meſſuage or dwelling houſe within that time aforeſaid uſed and ſpent, in and at another mill than the ſaid mill of the ſaid plaintiffs, to wit, at L. P S. aforeſaid, in the ſaid county, by reaſon whereof the ſaid plaintiffs have totally loſt the profit and advantage which they ought to have got and obtained from the grinding thereof at their ſaid mill, to wit, at L. P. S. aforeſaid, in the ſaid county:

2d Count. And whereas alſo, &c. [2d Count ſame as firſt, only ſtating the

3d Count. cuſtom to be to grind malt only, and therefore omitting the words in Italic]: And whereas alſo the ſaid Thomas and James, on the thirtieth of May 1787, and long before were, and continually from thenceforth hitherto have been, and ſtill are lawfully poſſeſſed of and in a certain other ancient water corn mill, with the appurtenances, ſituate, lying, and being within the ſaid manor or lordſhip of Lampeter Pont Stephen aforeſaid, in the ſaid county; and the ſaid plaintiff, being ſo poſſeſſed of the ſaid laſt-mentioned mill, with the appurtenances, by reaſon thereof, during all the time laſt aforeſaid, have had, and of right ought to have, for all the time laſt aforeſaid, toll of all corn, grain, and malt ground in the ſaid laſt-mentioned mill: And whereas alſo the reſiants and inhabitants reſiding and inhabiting in houſes within the ſaid manor or lordſhip of L. P. S. (ſave and except ſuch inhabitants and reſiants reſiding and inhabiting in houſes within the ſaid manor as are bound to any other mill with ſome part of their corn, and ſave and except poor cottagers, that buy ſome meal ready ground) have

during

during all the time laſt aforeſaid ground, and ſtill of right ought to grind all their corn, grain, and malt, which by them, or any of them, after the grinding thereof, had been and ſhould be uſed or ſpent in their ſaid reſpective houſes, at the ſaid laſt-mentioned mill of the ſaid plaintiffs: And whereas alſo the ſaid defendants, on the thirtieth day of May 1787, and long before were, and continually from thenceforth hitherto have been, an, ſtill are inhabitants and reſidants within the ſaid manor or lordſhip and are not, nor during the time laſt aforeſaid were bound to any other mill than the ſaid laſt-mentioned mill of the ſaid plaintiffs with any part of their corn, and are not, nor during the time laſt aforeſaid were not poor cottagers that bought ſome meal ready ground, and during all the time laſt aforeſaid have reſided and dwelt, and ſtill do reſide and dwell in a certain other dwelling-houſe, with the appurtenances, ſituate, ſtanding, and being within the manor aforeſaid, and by reaſon thereof, for all the time laſt aforeſaid ought to have ground, and ſtill ought to grind at the ſaid laſt-mentioned mill of the ſaid plaintiffs all their corn, grain, and malt, which after the grinding thereof by them, or either of them, had been or ſhould be uſed or ſpent in their ſaid laſt-mentioned dwelling-houſe, and to pay to the ſaid Thomas and James for the grinding thereof a reaſonable toll; nevertheleſs [grievances ſame as in firſt Count, and ſo on to the end]: And whereas alſo, &c. 4th Count.
[4th Count ſame as third, with the ſame difference as between the ſecond and firſt]: And whereas alſo the ſaid Thomas and 5th Count.
James afterwards, to wit, on the ſaid thirtieth day of May 1787, and long before were, and continually from thenceforth hitherto have been, and ſtill are lawfully poſſeſſed of and in a certain ancient water corn mill, with the appurtenances, ſituate, lying, and being within the manor or lordſhip of L. P. S. aforeſaid, in the ſaid county, and the ſaid plaintiffs being ſo poſſeſſed of the ſaid laſt-mentioned mill, with the appurtenances, by reaſon thereof, during all the time laſt aforeſaid, have had, and of right ought to have, for all the time laſt aforeſaid, toll of all corn, grain, and malt ground in the ſaid laſt-mentioned mill: And whereas alſo the reſiants and inhabitants reſiding and inhabiting in houſes within the ſaid manor or lordſhip of L. P. S. aforeſaid, in the ſaid county, during all the time laſt aforeſaid, ought to have ground, and ſtill of right ought to grind all their corn, grain, and malt which by them, or any of them, after the grinding thereof, had been or ſhould be uſed or ſpent in their ſaid reſpective houſes, at the ſaid laſt-mentioned mill of the ſaid plaintiffs: And whereas alſo the ſaid defendants, on, &c. and long before were, and continually from thenceforth hitherto have been, and ſtill are inhabitants and reſiants within the ſaid manor or lordſhip, and during all the time laſt aforeſaid have reſided and dwelt, and ſtill do reſide and dwell in a certain other dwelling-houſe, with the appurtenances, ſituate, ſtanding, and being within the manor or lordſhip aforeſaid, and by reaſon thereof, and for all the time laſt aforeſaid ought to have ground, and ſtill of right ought to grind in the ſaid laſt-mentioned mill of the ſaid plaintiffs, all their corn, grain, and malt, which

after

after the grinding thereof by them or either of them, had been or ſhould be uſed or ſpent in their ſaid laſt-mentioned dwelling-houſe, and to pay to the ſaid plaintiffs for the grinding thereof a certain reaſonable toll; nevertheleſs [the gravamen ſame as in the firſt Count, and ſo on to the end]: And whereas, &c. [6th Count ſame as fifth, with the ſame difference as between the ſecond and firſt]: And whereas alſo the ſaid plaintiffs, on, &c. and long before were, and continually from thence hitherto have been, and ſtill are lawfully poſſeſſed of and in a certain other ancient water corn mill, with the appurtenances, ſituate, lying, and being within the manor or lordſhip of L. P. S. aforeſaid, in the ſaid county; and the ſaid plaintiffs being ſo poſſeſſed of the ſaid laſt-mentioned mill, with the appurtenances, by reaſon thereof, during the time laſt aforeſaid, have had, and of right ought to have for all the time laſt aforeſaid, toll of all *corn*, *grain*, *and* malt, ground in the ſaid laſt-mentioned mill; and whereas the ſaid defendants, on, &c. and long before were, and continually from thenceforth hitherto have been, and ſtill are poſſeſſed of a certain other meſſuage or dwelling-houſe, with the appurtenances, ſituate, ſtanding, and being within the manor or lordſhip aforeſaid, in which ſaid laſt-mentioned dwelling-houſe they the ſaid defendants did for all the time laſt aforeſaid, and ſtill do inhabit and dwell, and by reaſon thereof, for all the time laſt aforeſaid, ought to have ground, and ſtill of right ought to grind at the ſaid laſt mentioned mill all their *corn*, *grain*, *and* malt which, after the grinding thereof had been and ſhould be uſed and ſpent in their ſaid meſſuage or dwelling-houſe, and to pay for the grinding to the ſaid plaintiffs a reaſonable toll; nevertheleſs the ſaid defendants, well knowing the premiſes laſt aforeſaid, but deſigning and maliciouſly intending, unjuſtly to injure and damnify the ſaid plaintiffs in this behalf, and to hinder and deprive them of the profits and advantage of their ſaid laſt-mentioned mill, and wrongfully and fraudulently deſigning and maliciouſly intending to evade the grinding of the ſaid laſt-mentioned malt at the ſaid laſt-mentioned mill of the ſaid plaintiffs, and to evade the paying of the ſaid laſt-mentioned reaſonable toll ariſing and accruing to the ſaid plaintiffs from the grinding of the ſaid laſt-mentioned malt at the ſaid laſt-mentioned mill of the ſaid plaintiffs, on, &c. and on divers other days, &c. at, &c. in, &c. did withdraw other their griſt from the ſaid laſt-mentioned mill of the ſaid plaintiffs, and did not all or during any part of the time laſt aforeſaid grind or cauſe to be ground at the ſaid mill any malt whatever, but during the time laſt aforeſaid did wrongfully, injuriouſly, evaſively, and deceitfully, in order to evade the grinding of the ſaid laſt-mentioned malt at the ſaid laſt-mentioned mill, and the payment of the laſt-mentioned toll as laſt aforeſaid, buy, and cauſed to be bought divers large quantities of malt ground, which had been ground elſewhere than at the ſaid laſt-mentioned mill of the ſaid plaintiffs, and did then and there uſe and ſpend the ſaid malt, ground and bought as laſt aforeſaid, within the ſaid laſt-mentioned meſſuage of the ſaid plaintiffs, and which the ſaid defendants, at the time of uſing and ſpending thereof, knew to have been

6th Count. 7th Count, againſt defendants, for buying corn which they had and ſpent within the manor, ready ground, and which had been ground at another mill; *per quod*, &c.

been ground elſewhere than at the ſaid laſt-mentioned mill of the ſaid plaintiffs, by reaſon whereof the ſaid plaintiffs have totally loſt the profit and advantage which they ought to have got and obtained from the grinding thereof at their ſaid laſt-mentioned mill, and the toll and multure ariſing therefrom, to wit, at, &c.: And whereas, &c. [this Count ſame as the ſeventh, leaving out the words in Italic]: And whereas alſo the ſaid plaintiffs, on, &c. and long before were, and continually from thenceforth hitherto have been, and ſtill are lawfully poſſeſſed of and in a certain other ancient water corn mill, with the appurtenances, ſituate, lying, and being within the manor or lordſhip of L. P. S. aforeſaid, in the ſaid county; and the ſaid plaintiffs being ſo poſſeſſed of the ſaid laſt-mentioned mill, with the appurtenances, by reaſon thereof, during the time laſt aforeſaid, have had, and of right ought to have, for all the time laſt aforeſaid, toll of all corn, grain, and malt ground in the ſaid laſt-mentioned mill: And whereas the reſiants and inhabitants reſiding and inhabiting in houſes within the ſaid manor or lordſhip of L. P. S. (ſave and except ſuch inhabitants and reſiants reſiding and inhabiting in ſuch houſes within the ſaid manor as are bound to any other mill with ſome part of their corn, and ſave and except poor cottagers that buy ſome meal ready ground) have during all the time laſt aforeſaid, ground, and ſtill of right ought to grind all their corn, grain, and malt, which by them or any of them had been or ſhould be uſed and ſpent, after the grinding thereof, in their ſaid reſpective houſes at the ſaid laſt-mentioned mill of the ſaid plaintiffs, to wit, at, &c.: And whereas alſo the ſaid defendants, on, &c. and long before were, and continually from thenceforth hitherto have been, and ſtill are reſiants and inhabitants within the ſaid manor or lordſhip, and are not, nor during the time laſt aforeſaid, were bound to any other mill than the ſaid laſt-mentioned mill of the ſaid plaintiffs with any part of their corn, and are not, nor during the time laſt aforeſaid were not poor cottagers that bought ſome meal ready ground, and during all the time laſt aforeſaid have reſided and dwelt, and ſtill do reſide and dwell in a certain other dwelling-houſe, with the appurtenances, ſtanding and being within the manor and lordſhip aforeſaid, and by reaſon thereof, and during all the time laſt aforeſaid ought to have ground, and ſtill of right ought to grind at the ſaid laſt-mentioned mill of the ſaid plaintiffs, all their corn, grain, and malt which, after the grinding thereof, had been or ſhould be by them or either of them uſed or ſpent in their ſaid meſſuage or dwelling-houſe, and to pay to the ſaid plaintiffs for the grinding thereof a reaſonable toll; nevertheleſs, &c. [gravamen ſame as in the ſeventh Count, and ſo on to the end]: And whereas, &c. [this Count ſame as the laſt, with the difference of *malt* only, inſtead of "corn, grain, and malt."] Damages, &c. Pledges, &c. *Drawn by* MR. J. GRAHAM.

8th Count.

9th Count.

10th Count.

It will be neceſſary for the plaintiff in this action to prove their poſſeſſion of the mill in queſtion, which may be done by any witneſs who knows the fact. The plaintiffs muſt then prove the defendants occupation of the meſſuage in right

right of which they are bound to grind their corn at the plaintiff's mill; this likewiſe may be done by a witneſs who knows the fact, and that they the defendants have occupied the meſſuage during the time ſtated in the declaration. The cuſtom muſt then be proved, which muſt be, by producing the court rolls of the manor, upon which I preſume the preſentments have been regularly entered. I think there will be no occaſion to give any other proof of the preſentments, as they are evidence of themſelves, without further proof, but in corroboration of this evidence, I would adviſe the plaintiffs to be prepared with the parol teſtimony of witneſſes in proof of the cuſtom. Any of the oldeſt inhabitants of the place will be good witneſſes to produce in ſupport of this. Some evidence ſhould be given that the defendants are not poor cottagers or owe ſuit to another mill, but the ſlighteſt proof will do to put the defendants to prove the contrary. The plaintiffs muſt then be prepared to prove the gravament in the declaration, viz. "that the defendants bought malt ready ground in order to evade the cuſtom;" this may be done by proving the buying the malt, and ſlight evidence that ſuch malt was not ground at the plaintiff's mill, and that ſuch malt was afterwards uſed and ſpent in the defendant's houſe. It would not be amiſs to prove, that the defendants ground no malt during the time mentioned in the declaration at the plaintiff's mill, which may be done by the teſtimony of plaintiff's ſervants. I do not ſee that any other proof will be neceſſary. I. G.

This cauſe was tried in Lent Aſſizes 1783, when plaintiff was nonſuited for not proving the cuſtom as laid in the declaration.

Tort by a copyholder for diſturbance of common, by ſurcharging common with cattle.

S. to wit. Plaintiff complains of defendant being, &c. for that whereas the manor of R. in the ſaid county S. now is, and from time whereof the memory of man is not to the contrary, hath been an ancient manor, and during all the time aforeſaid there have been and ſtill are divers ancient cuſtomary tenements within and reſpectively parcels of the ſaid manor, demiſed and demiſeable by copies of the court rolls of the ſaid manor by the lord or lady of the ſaid manor by his or her ſteward of the courts thereof for the time being, in fee ſimple or otherwiſe at the will of ſuch lord or lady, according to the cuſtom of the ſaid manor; and the eighteen acres of land, hereinafter mentioned to have been granted to the ſaid plaintiff with the appurtenances, during all the time aforeſaid, have been and ſtill are within and parcel of the ſaid manor and one of the cuſtomary tenements aforeſaid; and whereas there now is, and from time whereof the memory of man is not to the contrary, hath been within the ſaid manor, a certain ancient and laudable cuſtom there uſed and approved of, that is to ſay, that all and every the cuſtomary tenants of ſuch cuſtomary tenements, even the ſaid manor for the time being reſpectively, from time whereof the memory of man is not to the contrary, until the committing of the grievances hereinafter next mentioned, have had and of right ought to have had, and ſtill of right ought to have for themſelves, their farmers, and tenants, occupiers of ſuch reſpective tenements for the time being, common of paſture in, upon, and throughout a certain green called K. green, lying within the ſaid manor of R. and within the pariſh of K. in the ſaid county of S. for all their commonable cattle, levant and couchant, on their ſaid cuſtomary tenements reſpectively every year, at all times of the year at their free will and pleaſure

as

as belonging and appertaining to their said customary tenements respectively; and whereas before the committing of the grievances herein after next mentioned, to wit, on the [illegible] day of [illegible] A. D. 17[illegible], our sovereign lady the now queen, then being lady of the said manor at the court baron of the said queen, then holden at the said parish of K. in and for the said manor before A. B. gentleman, then her steward of the courts thereof, by copy of the court roll of the said manor granted to the said plaintiff, eighteen acres of land, lying at the said parish of K. with the appurtenances, to hold the same to the said plaintiff, his heirs and assigns for ever of the lord or lady of the said manor, by copy of the court rolls at the will of the lord or lady and according to the custom of the said manor; by virtue whereof the said plaintiff, afterwards and before the committing of the said grievance, to wit, on the day and year aforesaid, entered into the said eighteen acres of land with the appurtenances, and became and was seized thereof in his demesne as of fee at the will of the lord and lady according to the custom of the said manor; and the said plaintiff before and at the times of committing the said grievances was in the actual possession and occupation of the said eighteen acres of land with the appurtenances, and by reason of the several premises ought to have had such common of pasture as aforesaid, for all his commonable cattle, levant and couchant, thereon; yet the said defendant well knowing the premises (1) but contriving and maliciously intending to hurt, injure, and prejudice the said plaintiff in this behalf, and to deprive him of a great part of the benefit and advantage of his said common of pasture whilst the said plaintiff was so (2) *possessed* of the said *eighteen acres of* (3) land with the appurtenances as aforesaid, to wit, on the (4) first day of May, in the year *of our Lord* 1788 (5), and on divers other days and times between that day and the commencement of this suit at the parish aforesaid, wrongfully, unlawfully, and injuriously put and turned, and caused to be put and turned into and upon the said green, divers cattle, to wit, ten cows, ten geldings, ten mares, and twenty sheep; and on those several days and times, kept, fed, and depastured them there; whereby the said plaintiff on those several days and times was greatly hindered and deprived of his said (6) common of pasture on the said green, and could not have and enjoy the same in so large, ample, and beneficial a manner as he ought to have done, but lost a great part of the profit, benefit, and advantage thereof: And whereas also the said plaintiff, on the first of January in the year aforesaid, was and continually from thence hitherto hath been and still is lawfully possessed of and in divers, to wit, eighteen other acres of land with the appurtenances, lying and being in the said parish of K. in the said county of S. and by reason thereof during all the time aforesaid, until the committing of the grievances herein afterwards mentioned, hath had and hath used, and been accustomed to have, and of right ought to have had, and still of right ought to have common of pasture in, upon, and throughout the said green called K. green for all his commonable

(1) "last afore-said,"
(2) "seisedand"
(3) "last mentioned"
(4) "said"
(5) "aforesaid"
(6) "last mentioned"
2d Count.

commonable cattle, levant and couchant, on the ſaid laſt mentioned land with the appurtenances, every year at all times of the year, at his free will and pleaſure, as belonging and appertaining to the ſame; yet, &c. [the remainder of the Second Count was like the gravamen to the firſt, except the alterations by the words in Italic and thoſe printed in the margin.] Damage, one hundred pound, &c. S. MARRYATT.

The firſt Count which claims a right of common in reſpect of a copyhold *ſeiſin*, is inſerted only becauſe I underſtand the action to be brought at the inſtance of the copyholders of this manor at large, for the purpoſe of aſſerting what they conceive to be their general right; and I therefore wiſhed to have it aſcertained (as it would be in caſe of a general verdict for the plaintiff,) on the record of the judgment. *Poſſeſſion* is however ſufficient againſt a wrong doer, and conſequently for the mere purpoſe of this action is all the title that need have been ſhewn in the declaration; but it is abſolutely neceſſary to ſtate correctly, in reſpect of what premiſes the plaintiff has a right of common upon the green, for what ſorts of cattle, in what numbers or proportions, and at what periods of the year it is to be exerciſed. S MARRYAT.

Trinity Term, 6. Geo. III.

Declaration againſt defendant, for diſturbing the plaintiff in his right of common, by incloſing a part of the common.

WILSON *againſt* JEFFERSON. } CUMBERLAND, to wit. J. J. late, &c. was attached to anſwer J. W. of a plea of treſpaſs on the caſe, &c.; and whereupon the ſaid plaintiff, by A. B. his attorney, complains, that whereas the ſaid plaintiff, on the firſt of January 1765, and long before was, and continually from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of and *in a certain meſſuage, and divers, to wit, one hundred acres of land*, with the appurtenances, ſituate, lying, and being at the pariſh of Wigton, in the county aforeſaid, and by reaſon of his poſſeſſion thereof of right had, and during all that time of right ought to have had, and yet of right ought to have common of paſture for all his commonable cattle levant and couchant upon his ſaid meſſuage and land, with the appurtenances, in, upon, and throughout a certain large waſte or common called High Moor, otherwiſe Southend Green, in the pariſh of Wigton aforeſaid, every year and at all times of the year, at his will and pleaſure, to the ſaid meſſuage and land, with the appurtenances; nevertheleſs the ſaid J. well knowing the premiſes, but maliciouſly and wrongfully intending to injure the ſaid J. in the uſe and enjoyment of his common of paſture aforeſaid, whilſt he the ſaid J. was poſſeſſed of the ſaid meſſuage and land, with the appurtenances, as aforeſaid, and intereſted to the ſaid common of paſture as aforeſaid, that is to ſay, on the firſt of February 1766, unlawfully and injuriouſly incloſed, ſeparated, and divided, and cauſed to be incloſed, ſeparated, and divided with walls, ditches, and fences, parcel, to wit, four acres of the ſaid waſte or common called High Moor, otherwiſe Southend Green, from the reſidue of the ſaid waſte or common, and unlawfully continued, and cauſed to be continued the ſame ſo incloſed, ſeparated, and divided, for a long ſpace of time, to wit, from thence until the day of iſſuing forth

of

of the original writ of the ſaid J. whereby the ſaid J. during all that time, could not have and enjoy the ſaid common of paſture, in, upon, and throughout the ſaid waſte or common called High Moor, otherwiſe Southend Green, in ſo large, ample, and beneficial a manner, as of right he ought to have had and enjoyed the ſame, but during that time was hindered and deprived of very great part of the benefit and advantage thereof, to wit, at the pariſh aforeſaid: And whereas alſo the ſaid ; on the ſaid firſt 2d Count.
of January 1765 aforeſaid, and long before, was, and continually from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of and in a *certain other meſſuage*, with the appurtenances, ſituate and being at the pariſh of Wigton aforeſaid, and by reaſon of his poſſeſſion thereof of right had, and during all that time of right ought to have had, and of right ought to have common of paſture for all his commonable cattle levant and couchant upon his laſt-mentioned meſſuage, with his appurtenances, upon and throughout a certain other large waſte or common called High Moor, otherwiſe Southend Green, in the pariſh of Wigton aforeſaid, every year at all times of the year, at his will and pleaſure as to his laſt-mentioned meſſuage, with the appurtenances belonging and appertaining; nevertheleſs the ſaid J. well knowing the laſt-mentioned premiſes, but maliciouſly and wrongfully intending to injure the ſaid J. in the uſe and enjoyment of his laſt-mentioned common of paſture, whilſt he the ſaid J. was ſo poſſeſſed of his ſaid laſt-mentioned common of paſture as aforeſaid, that is to ſay, on the ſaid firſt of February 1766, unlawfully and injuriouſly incloſed, ſeparated, and divided, and cauſed to be incloſed, ſeparated, and divided with walls, ditches, and fences, parcel, to wit, four acres of the ſaid laſt-mentioned waſte or common called High Moor, otherwiſe Southend Green, from the reſidue of the ſame waſte or common, and unlawfully continued, and cauſed to be continued the ſame ſo incloſed, ſeparated, and divided for a long ſpace of time, to wit, from thence until the day of the iſſuing forth of the original writ of the ſaid J. whereby the ſaid J. during all that time could not have and enjoy his ſaid laſt-mentioned common of paſture in, upon, and throughout the ſaid laſt-mentioned waſte or common called High Moor, otherwiſe Southend Green, in ſo large, ample, and beneficial a manner as of right he ought to have had and enjoyed the ſame, but during that time was hindered and deprived of very great part of the profit, benefit, and advantage thereof, to wit, at, &c.: And whereas alſo the ſaid 3d Count, for diſturbing plaintiff in his right of common, by building a ſtable upon the ſame.
plaintiff, on the ſixth of January 1765 aforeſaid, and long before, was, and continually from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain other meſſuage, and divers, to wit, one hundred acres of other land, with the appurtenances, ſituate, lying, and being at the pariſh of Wigton aforeſaid, and by reaſon of his poſſeſſion thereof of right had, and during all that time of right ought to have had, and yet of right ought to have common of paſture for all his commonable cattle levant and couchant upon the laſt-mentioned meſſuage and land, with the appurtenances, in, upon, and throughout a certain other large waſte or

common called High Moor, otherwiſe Southend Green, in the pariſh of Wigton aforeſaid, every year, at all tim s of the year at his will and pleaſure as to his laſt-mentioned meſſuage and lands, with the appurtenances belonging and appertaining; nevertheleſs the ſaid J. well knowing the ſaid laſt-mentioned premiſes, but maliciouſly and wrongfully intend ng to injure the ſaid J. in the uſe and enjoyment of his ſaid laſt-mentioned common of paſture whilſt he the ſaid J. was ſo poſſeſſed of his laſt-mentioned meſſuage and lands, with the appurtenances as aforeſaid, and entitled to the ſaid laſt-mentioned common of paſture as aforeſaid, that is to ſay, on the firſt of February 1766 aforeſaid, unlawfully and injuriouſly *built and erected, and cauſed to be built and erected in and upon the ſaid laſt-mentioned waſte or common, a certain ſtable or barn, and unlawfully* continued, and cauſed to be continued the ſame ſo built and erected there, for a long ſpace of time, to wit, from thence until the day of iſſuing forth of the original writ of the ſaid J. whereby the ſaid J. during all that time could not have and enjoy his laſt-mentioned common of paſture, in, upon, and throughout the laſt-mentioned waſte or common, in ſo large, ample, and beneficial a manner as of right he ought to have had and enjoyed the ſame, but during that time was hindered and deprived of great part of the profit, benefit, and advantage thereof, to wit, at

4th Count. the pariſh of W. aforeſaid: And whereas alſo the ſaid J. on the firſt of January 1765 aforeſaid, and long before, was, and continually from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of and in a *certain other meſſuage*, with the appurtenances, ſituate, lying, and being at the pariſh of Wigton aforeſaid, and by reaſon of his poſſeſſion thereof of right had, and during all that time of right ought to have had common of turbary in, upon, and throughout a certain large waſte or common called High Moor, otherwiſe Southend Green, to dig and take peat and turf in, upon, and throughout the ſaid waſte or common for his neceſſary fuel, to be burnt and conſumed in the ſaid meſſuage every year at all times of the year, as occaſion required, as to the ſaid meſſuage belonging and appertaining, nevertheleſs the ſaid J. well knowing the ſaid laſt-mentioned premiſes, but maliciouſly and wrongfully intending to injure the ſaid Iſaac in the uſe and enjoyment of his ſaid common of turbary, whilſt he the ſaid J. was ſo poſſeſſed of his ſaid laſt-mentioned meſſuage, with the appurtenances as aforeſaid, and entitled to the ſaid common of turbary as aforeſaid, that is to ſay, on the firſt of February 1766 aforeſaid, unlawfully and injuriouſly incloſed, ſeparated, and divided, and cauſed to be incloſed, ſeparated, and divided with walls, ditches, and fences, parcel, to wit, four acres of the ſaid laſt mentioned waſte or common called High Moor, otherwiſe Southend Green, from the reſidue of the ſame waſte or common, and unlawfully continued, and cauſed to be continued the ſame ſo incloſed, ſeparated, and divided for a long ſpace of time, to wit, from thence until the day of iſſuing forth of the original writ of the ſaid J. whereby the ſaid J. during all that time could not have and enjoy the ſaid common of turbary in, upon, and throughout

out the ſaid laſt-mentioned waſte or common called High Moor, otherwiſe Southend Green, in ſo large, ample, and beneficial a manner as of right he ought to have had and enjoyed the ſame, but during that time was hindered and deprived of very great part of the profit, benefit, and advantage thereof, to wit, at the pariſh aforeſaid: And whereas alſo the ſaid Iſaac, on the firſt of January 1765 aforeſaid, and long before, was, and continually from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain other meſſuage, and divers, to wit, one hundred other acres of land, with the appurtenances, ſituate, lying, and being at the pariſh of W. aforeſaid, and by reaſon of his poſſeſſion thereof of right had, and during all the time aforeſaid of right ought to have had, and ſtill of right ought to have common of paſture for all his commonable cattle levant and couchant upon his meſſuage and lands, with the appurtenances, in, upon, and throughout a certain other waſte or common called Common, in the pariſh of , in the county aforeſaid, in every year, at all times of the year at his will and pleaſure as to his laſt-mentioned meſſuage and lands, with the appurtenances belonging and appertaining, nevertheleſs the ſaid Joſeph, well knowing the premiſes, but wrongfully contriving and intending to deprive the ſaid J. of the benefit and enjoyment of a ninth part of his ſaid laſt mentioned common of paſture on the ſaid firſt of February 1766 aforeſaid, for a long ſpace of time, that is to ſay, continually from thenceforth unt l the day of the iſſuing for h of the original writ of the ſaid J. injuriouſly upheld and continued in and upon the above mentioned part of the ſaid waſte or common called Common, certain walls, ditches, and fences which had before that time been erected and fixed there as aforeſaid, during all that time did wrongfully keep and continue the ſame part of the ſaid laſt-mentioned waſte or common incloſed and ſeparated from the ſaid reſidue thereof, whereby the ſaid Iſaac could not, during the time laſt aforeſaid, have and enjoy his laſt-mentioned common of paſture in ſo ample and beneficial a manner as during that time he ought of right to have enjoyed the ſame, but during all that time was wrongfully injured and deprived of a very great part of the benefit thereof, to wit, at the pariſh of W. aforeſaid; wherefore, &c. A. CHAMBRE. 5th Count.

TORTS to CORPOREAL RIGHTS.

Trinity Term, 24. Geo. III.

WATERS *againſt* CRAFTS. } LINCOLNSHIRE, to wit. Simon Waters complains againſt Joſeph Crafts being, &c. for that whereas the ſaid Simon on firſt of January 1785, and long before was, and continually from thence hitherto hath been, and ſtill Declaration for waſhing the ſkins of divers beaſts into which noxious liquors had been infuſed in a ſtream at which plaintiff in right of his meſſuage was entitled to have freſh water for the uſe of his houſe, and at which he had the right of watering his cattle, being on the premiſes.

ſtill is lawfully poſſeſſed of and in a certain meſſuage or drug houſe and brew houſe, yard, ſtable, and other premiſes with the appurtenances thereto belonging, ſituate and being at Oldpond, in the ſaid county of L. and during all the time aforeſaid, hath with his family inhabited and dwelt and yet doth inhabit and dwell therein, and whereas during all the time aforeſaid, until the committing of the grievances hereinafter next mentioned, a certain river, ſtream, or water courſe hath run and flowed, and during all the time aforeſaid hath been uſed and accuſtomed to run and flow, and of right ought to have run and flowed, and ſtill of right ought to run and flow from a certain place called , a little above the ſaid meſſuage or dwelling houſe and premiſes of the ſaid Simon, down and near unto the ſaid meſſuage or dwelling houſe and premiſes of the ſaid S. in the backſide thereof, and by and along the ſaid brewhouſe and yard of the ſaid Simon and ſo downward, and whereas the ſaid Simon during all that time was *not only* entitled to, and of right ought to have had, and uſed to have from the ſaid river, ſtream, or water courſe for ſupplying the ſaid Simon and his family reſiding in the ſaid dwelling houſe with water for brewing, and for his and their other neceſſary uſes and occaſions in the ſaid dwelling houſe of the ſaid Simon, *but was alſo entitled to, and of right ought to have had the uſe and benefit of the ſaid river, ſtream, or water courſe, and to have had and taken water therefrom for the watering of cattle of the ſaid Simon, being in and upon his aforeſaid premiſes with the appurtenances*; yet the ſaid Joſeph well knowing the premiſes, but contriving and maliciouſly intending, wrongfully and unjuſtly to hurt, injure, and aggrieve the ſaid Simon in this behalf and to deprive him of the uſe, benefit, and advantage of the water of the ſaid river, ſtream or water courſe for the purpoſe aforeſaid whilſt he the ſaid Simon was ſo poſſeſſed of the ſaid dwelling houſe and other premiſes, with the appurtenances, as aforeſaid, and whilſt the ſaid Simon and his family ſo inhabited and dwelt therein, to wit, on the firſt of January 1785, and on divers other days and times between that day and the day of exhibiting the bill of the ſaid Simon, at, &c wrongfully and injuriouſly dipped, waſhed, cleanſed, ſoaked, put, laid, and placed, and cauſed and procured to be dipped, waſhed, cleanſed, ſoaked, put, laid, and placed in the ſaid river, ſtream, or water courſe a little above the ſaid dwelling houſe and premiſes of the ſaid Simon, divers ſkins which had been infuſed with noxious and unwholeſome waſhes, liquors, drugs, ointments, and other hurtful and pernicious preparations, matters, and things, and wrongfully and injuriouſly kept and continued, and cauſed to be kept and continued the ſaid ſkins from time to time for a long time together during the ſaid time in the ſaid river, ſtream, or water courſe, whereby and by reaſon whereof the water of the ſaid river, ſtream, or water courſe ſo running and flowing down and near unto the ſaid meſſuage, dwelling houſe, and premiſes of the ſaid Simon on the backſide thereof, and by and along the ſaid brewhouſe and yard of the ſaid Simon from time to time on thoſe ſeveral days and times during the ſaid time, and before the exhibition

exhibiting of the bill of the ſaid Simon, was rendered and became ſo foul, dirty, corrupt, ſpoiled, unwholeſome, unſavory, naſty, and unfit for uſe, that the ſaid Simon would not on thoſe days and times during the ſaid time, have or uſe the ſame in ſo wholeſome, commodious, and beneficial a manner as he was uſed and accuſtomed to have, take, and uſe the ſame, and of right during all the ſaid time ought to have had, taken, and uſed the ſame, but was wholly deprived of all uſe, benefit, and advantage thereof, and could not uſe the ſame for brewing or for other neceſſary uſes and occaſions of himſelf and his family ſo reſiding in his ſaid dwelling houſe, *and by reaſon of the ſaid water of the ſaid river, ſtream, or water courſe being ſo rendered foul, dirty, corrupt, ſpoiled, fetid, unwholeſome, unſavory, and naſty, the cattle of the ſaid Simon being in and upon his ſaid premiſes upon thoſe ſeveral days and times during the ſaid time, refuſed to drink, and declined drinking the water out of the ſaid river, ſtream, or water courſe as before they were uſed and accuſtomed to do*; and the ſaid Simon was by reaſon of the ſaid premiſes, during the ſaid time put to great inconvenience and trouble for want of pure, wholeſome, and natural water out of the ſaid river, ſtream, and rivulet which he of right ought to have had and taken, and was put to great expence in and about the ſupplying of himſelf and his family with pure and wholeſo water, to wit, at, &c. [Second count ſame as the firſt, omitting the words in Italic.] Damage, two hundred pounds.

Drawn by MR. CROMPTON.

SURRY, to wit, James Henckell complains of Richard Shepley, being in the cuſtody of the marſhal of the marſhalſea of our lord the now king before the king himſelf of a plea of treſpaſs on the caſe; for that whereas the ſaid James Henckell heretofore, to wit, on the firſt day of September, in the year of our Lord 1777, was and from thence hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain ancient water mill, ſituate over and upon a certain river or ſtream of water commonly called the river Wandle, to wit, at the pariſh of Wandſworth, in the county of Surry; and whereas during all the time aforeſaid the water of the ſaid river Wandle of right ought to have run and flowed, and ſtill of right ought to run and flow from the ſaid mill of the ſaid James Henckell through divers lands in the pariſh aforeſaid, unto and into the river Thames without being penned back upon, and obſtructing the mill of the ſaid James Henckell or the wheels thereof or any or either of them, to wit, at the pariſh aforeſaid; and whereas the ſaid James Henckell by reaſon of his ſaid poſſeſſion of his ſaid mill during all the time aforeſaid, of right ought to have had, and ſtill of right ought to have the free current, courſe, uſe, and benefit of the ſaid water running and flowing, and the ſame ought to run and flow down unto his ſaid mill and the free courſe and current of the ſaid water, and the ſame ought to run and flow through and from his ſaid mill down unto and into the ſaid river Thames for the working of his aforeſaid mill, without

Declaration at ſuit of a miller againſt the occupier of another mill lower down the ſtream, for obſtructing and penning back the water in ſeveral different ways, whereby it was turned back upon plaintiff's mill, and prevented him working it.

the ſame being penned back upon his mill or the wheels thereof, or any or either of them, to wit, at the pariſh aforeſaid; and whereas the ſaid Richard Shepley, before and during all the time aforeſaid, was and ſtill is poſſeſſed of and in a certain other mill ſituate over and upon the ſaid river Wandle, that is to ſay, below the ſaid mill of the ſaid James Henckell and between the ſame and the river Thames, to wit, at the pariſh aforeſaid; and whereas the water of the ſaid river from time to time, during all the time aforeſaid, running and flowing from the ſaid mill of the ſaid James Henckell in and along the channel thereof towards the river Thames aforeſaid, when and ſo often as the ſame hath arrived at the ſaid mill of the ſaid Richard Shepley, to wit, at the head thereof, and hath ariſen and been at a certain height, to wit, the height of four feet from the bed of the ſaid river Wandle, hath until the obſtruction and ſtoppage thereof, hereafter next mentioned, been uſed and accuſtomed to run and flow, and for and during all the time aforeſaid of right ought to have run and flowed, and ſtill of right ought to run and flow from and out of the ſaid river Wandle over a tumbling bay, above and belonging unto the ſaid mill of the ſaid Richard Shepley, but below the mill of the ſaid James Henckell, to wit, at the pariſh aforeſaid, into a certain back channel or water courſe there leading from the ſaid tumbling bay into the ſaid river Wandle before the ſaid mill of the ſaid Richard Shepley, and from thence into the ſaid river Thames, ſo that the water of the ſaid river Wandle might not be penned back upon the mill of the ſaid James Henckell, and hinder and obſtruct the working thereof, to wit, at the pariſh aforeſaid; yet the ſaid Richard Shepley, well knowing the premiſes, but contriving and wrongfully and injuriouſly intending to injure the ſaid James Henckell and to deprive him of the benefit and advantage of working his ſaid mill, and of the profit that might otherwiſe ariſe and accrue therefrom, heretofore, to wit, on the firſt day of September, in the year of Our Lord 1777, and from thence hitherto hath wrongfully and unjuſtly kept and continued, and cauſed to be kept and continued the tumbling bay belonging to his ſaid mill much higher, to wit, ten inches higher than the ſame ought to have been raiſed or erected (the ſame having been before then wrongfully and unjuſtly ſo raiſed and erected); whereby the water on the day and year aforeſaid and on divers other days and times, between that day and the day of exhibiting this bill running and flowing from the ſaid mill of the ſaid James Henckell down unto the aforeſaid mill of the ſaid James Henckell down unto the aforeſaid mill of the ſaid Richard Shepley after arriving at the aforeſaid mill of the ſaid Richard Shepley, to wit, at the head thereof, and after ariſing and being at the aforeſaid height, to wit, the height of four feet aforeſaid, aroſe there to a much greater height, to wit, ten inches higher from the bed of the ſaid river Wandle (the ſame being ten inches higher than it ought to have ariſen on thoſe ſeveral days and times), by means of the ſaid tumbling bay of the ſaid Richard Shepley, ſo being higher than it ought to have been, and the ſaid waters ſo being on the ſeveral days and times aforeſaid higher than

than it ought to have been, continued higher than it ought to have been for a long time, to wit, for the ſpace of ten hours on and at each of thoſe ſeveral days and times, and was by the means aforeſaid obſtructed, ſtopped, hindered, and prevented from running and flowing over the tumbling bay belonging to the mill of the ſaid Richard Shepley as ſoon as and in manner it ought to have done, and thereby became and was penned back upon the mill of the ſaid James Henckell, to wit, upon the wheels thereof, that is to ſay, for and during the reſpective times aforeſaid; whereby the ſaid mill was for and during the reſpective times aforeſaid hindered and prevented from working; and the ſaid James Henckell thereby loſt and was deprived of the profit, benefit, and advantage that would otherwiſe have ariſen and accrued unto him from the working of the ſaid mill during the reſpective times aforeſaid, to wit, at the pariſh aforeſaid: And whereas the ſaid James Henckell afterwards, to wit, on the ſaid firſt day of September 1777 aforeſaid, was, and from thence hitherto hath been, and ſtill is poſſeſſed of and in a certain other ancient water mill, ſituate over and upon the ſaid river or ſtream of water, commonly called the river Wandle, to wit, at the pariſh aforeſaid; and whereas during all the time aforeſaid, the water of the ſaid river Wandle of right ought to have run and flowed, and ſtill of right ought to run and flow from the ſaid laſt mentioned mill of the ſaid James Henckell through divers lands in the pariſh aforeſaid, unto and into the river Thames without being penned back upon and obſtructing the ſaid mill of the ſaid James Henckell, or the wheels thereof, or any or either of them, to wit, at the pariſh aforeſaid; and whereas the ſaid James Henckell by reaſon of his ſaid poſſeſſion of his ſaid mill during all the time aforeſaid, of right ought to have had, and ſtill ought to have the free current courſe, uſe, and benefit of the ſaid water running and flowing, and the ſame ought to run and flow down unto his ſaid mill, and the free courſe and current of the ſaid water, and the ſame ought to run and flow through and from his ſaid mill down unto and into the aforeſaid river Thames for the working of his ſaid mill, without being penned back upon his ſaid mill or the wheels thereof, or any or either of them, to wit, at the pariſh aforeſaid; and whereas the ſaid Richard Shepley before and during all the time aforeſaid, was and ſtill is poſſeſſed of and in a certain other mill, ſituate over and upon the ſaid river Wandle, that is to ſay, below the ſaid mill of the ſaid James Henckell and between the ſame and the river Thames, to wit, at the pariſh aforeſaid; and whereas the water of the aforeſaid river Wandle from time to time during all the time aforeſaid, running and flowing from the ſaid mill of the ſaid James Henckell down towards the river Thames aforeſaid, when and ſo often as the ſame hath arrived at the ſaid mill of the ſaid Richard Shepley, to wit, at the head thereof, and hath ariſen and been at a certain height, to wit, the height of four feet from the bed of the ſaid river Wandle, hath until the obſtruction and ſtoppage thereof, hereafter next mentioned, been uſed and accuſ-

2d Count, keeping tumbling bay narrower.

tomed

ought to run and flow, and for and during all the time aforeſaid of right ought to have run and flowed, and ſtill of right ought to run and flow from and out of the ſaid river Wandle over a tumbling bay above and belonging unto the ſaid mill of the ſaid Richard Shepley but below the ſaid mill of the ſaid James Henckell, to wit, at the pariſh aforeſaid, into a certain back channel or water courſe, there leading from the ſaid tumbling bay into the ſaid river Wandle below the ſaid mill of the ſaid Richard Shepley, and from thence into the ſaid river Thames, ſo that the water of the ſaid river Wandle might not be penned back upon the ſaid mill of the ſaid James Henckell, and hinder and obſtruct the working thereof, to wit, at the pariſh aforeſaid; yet the ſaid Richard Shepley, well knowing the premiſes, but contriving and wrongfully and injuriouſly intending to injure the ſaid James Henckell, and to deprive him of the benefit and advantage of working ſaid mill, and of the profit that might otherwiſe ariſe or accrue therefrom, heretofore, to wit, on the firſt day of September, in the year of Our Lord 1777 aforeſaid, and from thence hitherto *hath wrongfully and unjuſtly kept and continued, and cauſed to be kept and continued the tumbling bay belonging to his ſaid mill much narrower, to wit, ten inches narrower than the ſame ought to have been erected* (the ſame having been before then wrongfully and unjuſtly ſo raiſed and erected); whereby the water, on the day and year laſt aforeſaid, and on divers other days and times between that day and the day of exhibiting this bill, running and flowing from the ſaid mill of the ſaid James Henckell down unto the ſaid mill of the ſaid Richard Shepley, after arriving at the aforeſaid mill of the ſaid Richard Shepley, to wit, at the head thereof, and after ariſing and being at the aforeſaid height, to wit, the height of four feet aforeſaid, roſe there to a much greater height, to wit, ten inches from the bed of the ſaid river Wandle, the ſame being ten inches higher than it ought to have been on thoſe ſeveral days and times, by means of the ſaid tumbling bay of the ſaid Richard Shepley ſo being narrower than it ought to have been, and the ſaid water ſo being on the ſeveral days and times aforeſaid continued higher than it ought to have been for a long ſpace of time, to wit, for the ſpace of ten hours on and at each of thoſe ſeveral days and times, and was, by the means aforeſaid, obſtructed, ſtopped, hindered, and prevented from running and flowing over the tumbling bay belonging to the mill of the ſaid Richard Shepley, ſo ſoon as and in the manner it ought to have done, and thereby became and was penned back upon the mill of the ſaid James Henckell, to wit, upon the wheels thereof, that is to ſay, for and during the reſpective times aforeſaid, whereby the ſaid mill was, for and during the reſpective times aforeſaid, hindered and prevented from working, and the ſaid James Henckell thereby loſt and was deprived of the profit, benefit, and advantage that would otherwiſe have ariſen and accrued unto him from the working of the ſaid mill during the reſpective times aforeſaid, to wit, at the pariſh aforeſaid: And whereas, &c. [as in the ſecond Count to this mark ‡, without being penned back upon and obſtructing *his ſaid mill*, to wit, at the

2d Count, laying the mill [illegible] Wandle, [illegible]

the pariſh aforeſaid; yet the ſaid Richard Shepley well knowing, &c. but contriving, &c. hath wrongfully and unjuſtly kept and continued, and cauſed to be kept and continued a certain mill, and divers, to wit, three wheels before then wrongfully and unjuſtly erected acroſs and upon the ſaid river Wandle, below the mill of the ſaid James, and between the ſame and the ſaid river Thames, to wit, at the pariſh aforeſaid, whereby the water, on the day and year laſt aforeſaid, and on divers other days and times between that day and the day of exhibiting this bill, running and flowing from the ſaid mill of the ſaid James Hanckell down towards the river Thames unto the ſaid laſt mentioned mill of the ſaid Richard Shepley, was, by the means of the ſaid mill and wheels of the ſaid Robert S. for a long time, to wit, for the ſpace of ten hours, at and on each and every of thoſe days and times, obſtructed, ſtopped, hindered, and prevented from running and flowing down unto and into the river Thames aforeſaid, and at and on each of thoſe days and times thereby became and was forced back upon the mill of the ſaid James Henckell, to wit, upon the wheels thereof, whereby, &c. [as in the former Counts]: And whereas, &c. [exactly the ſame as the third Count to the gravamen, with charges] that the defendant hath wrongfully and injuriouſly kept and continued, and cauſed to be kept and continued divers, to wit, three large wheels in a mill (the ſaid wheels being before then wrongfully and unjuſtly ſo erected in the ſaid mill), and the ſaid mill being erected acroſs and upon the ſaid river Wandle, below the ſaid mill of the ſaid James, and between the ſame and the ſaid river Thames, to wit, at the pariſh aforeſaid, whereby the water, on the day and year laſt aforeſaid, and on divers other days and times between that day and the day of exhibiting this bill, running and flowing from the ſaid mill of the ſaid James Henckell down towards the river Thames unto the ſaid laſt-mentioned mill of the ſaid Richard Shepley, by the means of the ſaid wheels in the ſaid mill of the ſaid Richard Shepley, for a long time, to wit, for the ſpace of ten hours, &c. [as in the 3d Count to the end]: And whereas, &c. [as in the ſecond Count to this mark †, *without being penned back upon and obſtructing the ſame*, to wit, at the pariſh aforeſaid: And whereas the ſaid Richard Shepley, before and during all the time aforeſaid, was and ſtill is poſſeſſed of a certain other mill, ſituate over and upon the ſaid river Wandle, that is to ſay, below the ſaid laſt-mentioned mill of the ſaid James Henchell, and between the ſame and the ſaid river Thames, to wit, at the pariſh aforeſaid: And whereas the water of the ſaid river Wandle, from time to time during all the time aforeſaid, running and flowing from the ſaid mill of the ſaid James Henckell towards the river Thames aforeſaid, ought to have run and flowed down unto and into the ſaid river Thames without being obſtructed and penned back by the ſaid Richard Shepley, or any wheel or other part thereof, upon the mill or wheels of the ſaid mill of the ſaid James Henckell, or any or either of them, ſo as to prevent or in any manner hinder the ſaid James Henckell in the working of his ſaid mill, to wit, at the pariſh aforeſaid; yet the ſaid Richard Shepley,

4th Count, erecting wheels.

5th Count, keeping a certain wheel certain ancient forement.

ley, well knowing, &c but contriving, &c. hath wrongfully and unjuſtly kept and continued a certain wheel, to wit, a wheel of large diameter and width, to wit, of the diameter of twenty five foot, and of the width of five foot, before then wrongfully and unjuſtly erected in the laſt-mentioned mill of the ſaid Richard Shepley over and upon the ſaid river Wandle, whereby the water on the day and year laſt aforeſaid, and on divers other days and times between that day and the day of exhibiting this bill, was for a long time, to wit, for the ſpace of ten hours on and at the ſeveral days and times by the means of the ſaid wheel in the mill of the ſaid Richard Shepley, obſtructed, ſtopped, hindered, and prevented from and flowing down unto and into the ſaid river Thames, and thereby became and was forced, and penned back upon the ſaid laſt-mentioned mill of the ſaid James Henckell, to wit, on one of the wheels thereof, that is to ſay, on the largeſt and principal wheel thereof, whereby the ſaid laſt-mentioned mill was, for and during the reſpective times aforeſaid, hindered and prevented from working in ſo large and ample a manner as he otherwiſe would have done, and the ſaid James Henckell thereby loſt and was deprived of the profit, benefit, and advantage that would otherwiſe have ariſen and accrued unto him from the working of his ſaid mill during the reſpective times aforeſaid, to wit, at the pariſh aforeſaid: And

5th Count. whereas, &c [like the fifth Count, omitting what is in Italic to this mark §], without being obſtructed and penned back by the mill of the ſaid Richard Shepley, or the apron thereof upon the mill of the ſaid James Henckell, or the wheels thereof, or any or either of them, ſo as in any manner to obſtruct the ſaid James Henckell in the working of his ſaid mill in any manner whatſoever, to wit, at the pariſh aforeſaid; yet the ſaid Richard Shepley, well knowing the premiſes, but contriving, &c. hath wrongfully and injuriouſly kept and continued, and cauſed to be kept and continued an apron in the ſaid river Wandle, *above* and adjoining to the ſaid mill of the ſaid Richard Shepley, of a great height, length, and width, to wit, of the height of three foot and ſix inches, of the length of thirty feet, and of the width of twenty-five feet, being much higher, longer, and wider than the ſame ought of right to be, to wit, two feet higher, ten feet longer, and five feet wider than the ſame ought to be, the ſaid apron having been before wrongfully and unjuſtly raiſed, erected, and placed in and acroſs the ſaid river Wandle, to wit, upon and in the bed thereof, that is to ſay, at the pariſh aforeſaid, whereby the water, on the day and year aforeſaid, and on divers other days and times between that day and the day of exhibiting this bill, running and flowing from the ſaid laſt-mentioned mill of the ſaid James Henckell down to the ſaid mill of the ſaid Richard Shepley towards the ſaid river Thames, aroſe to a much greater height, to wit, ten inches higher from the bed of the ſaid river Wandle, the ſame water being ten inches higher than it ought to have ariſen on thoſe ſeveral days and times, by means of the ſaid apron ſo being erected acroſs the ſaid river Wandle,

Wandle, and the ſaid water, ſo being on the ſeveral days and times aforeſaid higher than it ought to have been, for a long time, to wit, for the ſpace of ten hours, was on and at thoſe ſeveral days and times, obſtructed, ſtopped, hindered, and prevented from running and flowing unto and into the ſaid river Thames, and thereby became and was penned back upon the mill of the ſaid James Henckell, to wit, upon the wheels thereof, whereby the ſaid laſt-mentioned mill was, for and during the reſpective times aforeſaid, hindered, &c. *in tam ample modo* &c. as in the fifth Count to the end]: And whereas, &c. [as in the fifth Count to this mark §, only adding after the words *without being penned back upon and obſtructing the ſame, the words in any manner whatſoever*, then proceeding from the mark, ſay], by the mill of the ſaid Richard Shepley, or the conduits thereof, or any other part of the ſame, upon the mill of the ſaid James Henckell, or the wheels thereof, or any or either of them, ſo as to obſtruct the ſaid James Henckell in the working of his ſaid mill in manner whatſoever, to wit, at the pariſh aforeſaid; yet the ſaid Richard Shepley, well knowing the ſaid premiſes, but contriving, &c. hath wrongfully and unjuſtly kept and continued, and cauſed to be kept and continued divers, to wit, three conduits before then wrongfully and unjuſtly erected in the ſaid river Wandle, and in and upon the bed thereof, in and belonging unto the ſaid mill of the ſaid Richard Shepley, of a great height, to wit, the height of three feet, being reſpectively much higher, to wit, three feet higher each than the ſame ought to have been, to wit, at the pariſh aforeſaid, whereby the water, on the day and year aforeſaid, and on divers other days and times between that day and the day of exhibiting this bill, running and flowing from the ſaid mill of the ſaid James Henckell unto the ſaid mill of the ſaid Richard Shepley towards the river Thames, for a long time, to wit, for the ſpace of ten hours, on and at each of thoſe ſeveral days and times, was by the means aforeſaid obſtructed, ſtopped, hindered, and prevented from running and flowing over and through the ſaid conduits, ſo being wrongfully erected and placed on the ſaid river Wandle, and in and upon the bed thereof, higher than they ought to have been, unto and into the ſaid river Thames, and thereby became and was penned back upon the mill of the ſaid James Henckell, for and during the reſpective times aforeſaid, whereby, &c. [as in the fifth Count]: And whereas, &c. [exactly like the ſixth Count, to the mark §, except that the plaintiff's mill is not called *ancient*, alledging that the water ought to have flowed down to the ſaid river Thames without being obſtructed and penned back by the mill of the ſaid Richard Shepley, or the waſte gates belonging thereunto upon the mill of the ſaid James, or the wheels thereof, or any or either of them, ſo as to obſtruct the ſaid James Henckell in the working of his ſaid mill in any manner whatſoever, to wit, at the pariſh aforeſaid; yet the ſaid Richard, well knowing the premiſes, but contriving, &c. heretofore,

7th Count, keeping out dates.

8th Count, keeping waſte gates.

fore, to wit, on the firſt day of September, in the year 1777, and on divers other days and times between that day and the day of exhibiting the bill of the ſaid James, wrongfully and unjuſtly kept and continued, and cauſed to be kept and continued certain gates, to wit, two gates erected in and upon and acroſs a part of the ſaid river Wandle below the mill of the ſaid James, between the ſame and the ſaid river Thames, and belonging and near to the ſaid laſt mentioned mill of the ſaid Richard, called waſte gates, ſhut for a long time, to wit for the ſpace of ten hours, at and on each and every of thoſe days and times, and through the paſſage obſtructed by the ſaid gates had the ſame been open the water would have run and flowed into the river Thames, by means whereof the water of the ſaid river on and at thoſe ſeveral days and times running and flowing from the ſaid mill of the ſaid James towards the river Thames aforeſaid, for a long time; to wit, for the ſpace of ten hours, on and at thoſe ſeveral days and times, was by the means aforeſaid obſtructed, ſtopped, hindered, and prevented from running and flowing into the ſaid river Thames, and thereby became and was penned back upon the mill of the ſaid James, to wit, on the wheels thereof, that is to ſay, for and during the reſpective times aforeſaid; whereby, &c. [as in the fifth Count]: And whereas, &c. [as in the ſecond Count to this mark ‡, but not calling the mill an ancient one] without being penned back upon and obſtructing the ſaid mill of the ſaid James, or the wheels thereof, or any or either of them, ſo as in any manner to obſtruct the working of the ſaid mill, to wit, at the pariſh aforeſaid; yet the ſaid Richard, well knowing, &c. but contriving, &c. hath wrongfully and unjuſtly kept and continued, and cauſed to be kept and continued a certain large building, to wit, a building called a mill, before then wrongfully and unjuſtly erected and built over, upon, and acroſs the ſaid river Wandle below the ſaid mill of the ſaid James, and between the ſame and the river Thames, to wit, at the pariſh aforeſaid, and thereby for a long time, to wit, during all that time, obſtructed, ſtopped, hindered, and prevented the water of the aforeſaid river Wandle from running and flowing unto and into the ſaid river Thames, in ſo free and quick a manner as it otherwiſe would have done, and the ſaid water thereby, for a long time, to wit, for and during all that time, became and was penned back upon the mill of the ſaid James, to wit, on the wheels thereof, whereby the ſaid laſt-mentioned mill was, for and during all that time, hindered and prevented from working in ſo large and ample a manner as it otherwiſe would have done, and the ſaid James thereby loſt and was deprived of the profit, benefit, and advantage that would otherwiſe have ariſen and accrued unto him from the working of the ſaid mill during the time aforeſaid, to the ſaid James his damage of two hundred pounds, and therefore he brings ſuit, &c. Pledges, &c.

5th Count, declaring and continuing a mill.

J. MORGAN.

The

The defendant pleaded the general iſſue not guilty, upon which iſſue was joined. The cauſe was tried at the aſſizes before lord Mansfield and a ſpecial jury. The trial laſted the whole day, and a verdict was given for the defendant.

GREEN, CLERK, *againſt* PHILIPS, CLERK. } WORCESTERSHIRE, to wit, Henry Green, clerk, vicar of Feckenham, in the ſaid county of Worceſter, complains againſt Edward Phillips, clerk, being, &c.; for that whereas according to the law and cuſtom of England hitherto obtained, uſed, and approved, all and ſingular the prebends, rectors, and vicars of churches for the time being within England aforeſaid, are bound and ought to repair and uphold all and ſingular the houſes, edifices, and buildings of the prebendaries, rectories, and vicarage, and to leave the ſame ſo repaired and upheld to their ſucceſſors; And whereas the ſaid Edward, late vicar of the ſaid pariſh of Feckenham in right of the ſaid vicarage, was ſeiſed of and in one dwelling-houſe, two ſtables, two barns, one coach-houſe and cow-houſe, one dove-houſe, and other outhouſes, with the appurtenances, in Feckenham aforeſaid, in the county aforeſaid; And whereas the ſaid benefice of the ſaid church of Feckenham is, and at the ſaid time when the ſaid Edward was vicar thereof, and accepted the other benefice hereinafter mentioned, was benefice with cure of ſouls, and above the yearly value of eight pounds, to wit, of the yearly value of twenty pounds; And whereas the ſaid Edward having the ſaid benefice of the ſaid church of Feckenham heretofore, to wit, on the tenth of September 1786, accepted and took another benefice with cure of ſouls, to wit, the vicarage of the pariſh church of Meopham, in the county of Kent, and was admitted, inſtituted, and inducted into the poſſeſſion of the ſaid church of Meopham; by means of which taking and acceptance of the ſaid benefice of the aforeſaid laſt-mentioned church, and the inſtitution and induction into the poſſeſſion thereof, and alſo by force of the ſtatute in that caſe made and provided, the ſaid church of Feckenham became vacant; and the ſaid Henry afterwards, to wit, on the thirteenth of September 1786, at Feckenham aforeſaid, in the ſaid county of Worceſter, was in due form of law preſented to the ſaid vicarage of the pariſh church of Feckenham aforeſaid, ſo made vacant as aforeſaid, and was inſtituted and inducted into the ſame, and ſtill continues the vicar thereof, and was and is the lawful and next ſucceſſor to the ſaid Edward of and in the ſame; and the ſaid Henry avers, that long before, and from thence until and at the ſaid time when the ſaid vicarage of Feckenham became vacant by the ſaid acceptance of the ſaid vicarage of Meopham by the ſaid Edward as aforeſaid, and long before, the dwelling-houſe, ſtables, barns, coach-houſe, cow-houſe, dove-houſe, and other out-houſes, with the appurtenances, were very ruinous and in decay for want of neceſſary repairs thereof, and that ſo much as at the time when the ſaid vicarage of Feckenham became vacant as aforeſaid, was ſufficient to be laid out in the neceſſary repairs of the ſaid dwelling-houſe and premiſes, amounted

Declaration by vicar againſt his predeceſſor, for dilapidations.

amounted to a large ſum of money, to wit, the ſum of one hundred pounds of lawful money of Great Britain, of which the ſaid Henry afterwards, and after the ſaid vicarage was vacated by the ſaid Edward as aforeſaid, gave notice to the ſaid Edward, and then and there demanded of him for the ſame the ſaid ſum of money ſo neceſſary as aforeſaid; yet the ſaid Edward, not regarding the premiſes, but deviſing and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid Henry in this behalf, hath not yet paid to the ſaid Henry the ſaid ſum of money, or any part thereof, nor any ſum of money whatſoever for or towards the repairing the premiſes aforeſaid, but to pay the ſame to the ſaid Henry hath hitherto wholly refuſed, and ſtill doth refuſe, whereupon the ſaid Henry ſays he is injured, and hath ſuſtained damage to the value of one hundred pounds; therefore, &c. Pledges, &c.

Declaration. Plaintiff was poſſeſſed of a houſe, which ſtood between two others. The defendant pulled down the two houſes, whereby he expoſed plaintiff's houſe to the weather, and rendered it unfit to live in. Plaintiff's goods damaged, and he obliged to get another houſe.

MIDDLESEX, to wit. William Norris, &c. were attached to anſwer John Buchanan, in a plea of treſpaſs on the caſe, and thereupon the ſaid J. B. by J A. his attorney, complains; for that whereas the ſaid J. B. before and at the time of the committing of the grievance hereinafter mentioned, was lawfully poſſeſſed of a certain meſſuage or dwelling-houſe, with the appurtenances, ſituate, ſtanding, and being in the pariſh of, &c. in, &c. between two other meſſuages or dwelling houſes there then ſituated; yet the ſaid William, &c. contriving and wrongfully intending to injure the ſaid J. B. and to deprive him of the uſe and benefit of his ſaid meſſuage or dwelling-houſe, heretofore, to wit, on, &c. and on, &c. then next following, at, &c. in, &c. wrongfully and injuriouſly, and without the licence or conſent, and againſt the will of the ſaid J. B. pulled down and proſtrated, and cauſed and procured, &c. the ſaid ſeveral meſſuages or dwelling-houſes, between which the ſaid meſſuage or dwelling-houſe of the ſaid J. B. was ſo ſituate and erected as aforeſaid, whereby the ſaid meſſuage or dwelling-houſe of the ſaid J. B. was laid open and expoſed to the weather, and the walls, roof, and tiling thereof, were conſiderably injured and damaged, and the ſaid meſſuage or dwelling-houſe thereby became uninhabitable, and of no uſe to him the ſaid J. B. and ſo remained and continued, whereby he the ſaid J. B. was forced and obliged, at a conſiderable inconvenience and expence, and to the great hindrance, obſtruction, and interruption of him in his ſaid buſineſs of a taylor, to quit and leave his ſaid meſſuage, and to hire another and different one; and the ſaid J. B. alſo ſaith, that by reaſon of his ſaid houſe being ſo laid open and expoſed as aforeſaid, divers goods and other furniture of the ſaid J. B. therein being, of a large value, were greatly daubed, wetted, ſpoiled, injured, and damaged, and he the ſaid J. B. hath alſo, ſince the committing the grievance aforeſaid, been obliged to pay rent of and for the ſaid meſſuage or dwelling-houſe, notwithſtanding he hath, by reaſon of the grievance aforeſaid, been unable to inhabit and uſe the ſame, and the ſaid J. B. alſo was, hath been, and is on occa-

occaſion of the grievance, and of other the premiſes aforeſaid, otherwiſe greatly injured and damnified, to wit, at, &c. in, &c. to the damage, &c. of five hundred pounds.

V. LAWES.

LANCASHIRE, to wit. James Armrod complains of Henry Hargreaves; for that whereas the ſaid James, before and at the time of the committing of the grievance hereafter next mentioned, was, and from thence hitherto hath been, and ſtill is poſſeſſed of divers, to wit, three acres of land, with the appurtenances, ſituate, lying, and being in the pariſh of, &c. in, &c.: And whereas a certain ancient river or water courſe there called Jewell River, from time whereof the memory of man is not to the contrary, until the time of committing the grievance hereafter next mentioned, did run and flow, and was uſed and accuſtomed to run and flow, and of right ought to have runned and flowed, and ſtill of right ought to run and flow upon and over the ſaid lands of the ſaid James in great plenty and abundance, for the watering of the cattle from time to time depaſturing and feeding in and upon the ſaid land of ſaid James, and for the more convenient enjoyment thereof, to wit, at, &c.; yet the ſaid Henry, well knowing the premiſes, but contriving, &c. the ſaid James, and to deprive him of the benefit and advantage of the ſaid river or water courſe ‡, whilſt the ſaid James was ſo poſſeſſed of ſaid land as aforeſaid, to wit, on, &c. and from thence until the day of exhibiting the bill of ſaid James againſt the ſaid Henry, to wit, at, &c. *wrongfully and injuſtly continued, and cauſed to be continued certain wear before then wrongfully and injuſtly erected and ſet up in and acreſs the ſaid river or water courſe, and alſo a certain mill-race communicating therewith, before then wrongfully and injuſtly cut, dug, and made above the ſaid land of the ſaid James, and thereby for and during all the time aforeſaid*, wrongfully and unjuſtly diverted and turned, and cauſed to be diverted and turned the ſaid river or water courſe from and out of its ancient due and accuſtomed courſe *with the ſaid mill race*, and hindered the ſame from running and flowing upon and over the ſaid lands of the ſaid James, in ſo copious and abundant a manner as it otherwiſe would, and of right ought to have done, to wit, at, &c. whereby the ſaid James hath, during all the time aforeſaid, loſt and was deprived of the uſe, benefit, and advantage of the ſaid river or water courſe for watering of cattle from time to time depaſturing and feeding in and upon the ſaid land of the ſaid James, and was put to great trouble and expence in and about the watering of the ſame elſewhere than in the ſaid river or water courſe, to wit, at, &c.; And whereas, &c. &c. [as in the firſt Count to this mark ‡] whilſt the ſaid James was ſo poſſeſſed of the ſaid land as aforeſaid, to wit, on, &c. at, &c. in, &c. wrongfully and injuriouſly cut, dug, and made a certain mill-race communicating with the ſaid river or water courſe above the ſaid land of the ſaid James, much wider

Declaration against ſaid defendant, for erecting a wear and mill-race, and diverting the courſe of a river which uſed to run through the plaintiff's lands, whereby he watered his cattle, putting him to great expence in procuring water for his cattle.

2d Count.

and deeper, to wit, five feet wider, and one foot deeper than the ſame had before then been, or then of right ought to be, and wrongfully and unjuſtly continued, and cauſed to be continued the ſaid river or water courſe ſo wider and deeper as aforeſaid for a long ſpace of time, to wit, from thence until the day of exhibiting the bill of the ſaid James againſt the ſaid Henry, and thereby for and during all the time aforeſaid, wrongfully and unjuſtly diverted and turned, and cauſed to be diverted and turned the ſaid river or water courſe from and out of its ancient, due, and accuſtomed courſe into the ſaid mill race, and hindered and prevented the ſame from running or flowing upon or over the ſaid land of the ſaid James in ſo copious and abundant a manner as it otherwiſe would and of right ought to have done, to wit, &c. whereby the ſaid James, for and during all the time laſt aforeſaid, loſt, &c. &c. [as before] And whereas, &c. &c. [like the firſt, omitting what is in Italic, &c.]

2d Count.

GEO. WOOD.

Declaration for filling a leaden box which had been placed between the plaintiffs and defendant's ciſtern for the purpoſe of carrying the rain water from their two houſe tops into each of them equally, and thereby conveying it wilfully into that of defendant.

CITY of BRISTOL, to wit. William Bawden complains of John Hutch being, &c. of a plea, for that whereas the ſaid plaintiff, on the firſt day of February A. D. 1779, and for a long time, to wit, for the ſpace of ſix years then laſt paſt, was, and from thence hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain meſſuage or dwelling houſe, with the appurtenances, ſituate in the city of Briſtol, in the county of the ſame city, in which ſaid meſſuage or dwelling-houſe the ſaid plaintiff, with his family, for and during all the time aforeſaid, hath inhabited and dwelt, and ſtill doth inhabit and dwell, and the ſaid defendant alſo, on the ſaid firſt day of February A. D. 1779, was, and from thence hitherto hath been, and ſtill is poſſeſſed of and in a certain other meſſuage or dwelling houſe, with the appurtenances, ſituate in, &c. aforeſaid, and being contiguous and next adjoining to the ſaid meſſuage or dwelling-houſe of the ſaid defendant, he the ſaid defendant with his family hath, during all the time laſt aforeſaid, inhabited and dwelt. And whereas long before the committing of the grievance hereafter mentioned, there was and ought to have been, and from thence hitherto there hath been and ought to have been, and there ſtill is and ought to be a certain ciſtern or reſervoir heretofore made and dug under and beneath a certain kitchen of and belonging to the ſaid meſſuage or dwelling-houſe of the ſaid defendant, for the reception of the rain water from time to time deſcending from the heavens on and upon the reſpective tops of the ſaid reſpective meſſuages of the ſaid plaintiff and defendant from thence into the ſaid ciſtern or reſervoir, through certain pipes and ſpouts before then, and during all the time aforeſaid, reſpectively fixed and appurtenant to the ſaid reſpective meſſuages of the ſaid plaintiff and defendant into the ſaid ciſtern and reſervoir for the neceſſary ſupplying the reſpective owners of the ſaid two reſpective meſſuages for the time being with

with rain water, to be uſed and expended in the ſaid reſpective meſſuages by the reſpective owners of the ſaid reſpective meſſuages for the time being, for their reſpective uſes in common, until the dividing and parting of the ſaid ciſtern and reſervoir hereafter mentioned, and which ſaid ciſtern or reſervoir always from the time of the firſt digging and making thereof until the diviſion and parting thereof hereafter mentioned, was one whole and entire ciſtern or reſervoir for the purpoſes aforeſaid, without any diviſion whatſoever, and which ſaid ciſtern or reſervoir was, before the commitment of the grievance hereafter mentioned, and during the occupation and poſſeſſion of the ſaid plaintiff and defendant reſpectively of their ſaid reſpective meſſuages, to wit, on, &c. at, &c. aforeſaid, divided between the ſaid plaintiff and defendant by and with their mutual conſent, by a certain wall erected in and acroſs the ſaid ciſtern or reſervoir, and by the ſaid plaintiff and defendant allotting (between themſelves) one part of the ſaid ciſtern or reſervoir to the ſole uſe of the occupier of the ſaid meſſuage, now of the ſaid defendant for the time being, and the other part of the ſaid ciſtern or reſervoir to the ſole uſe of the occupier of the ſaid meſſuage, now of the ſaid plaintiff for the time being, and by the placing and fixing a certain leaden box with two ſpouts upon the ſaid wall, a little below or under the main ſpout or pipe, ſo conveying the ſaid rain water from the ſaid reſpective tops of the ſaid reſpective meſſuages into the ſaid ciſtern or reſervoir, ſo that the ſaid rain water might for the then future run out of the ſaid main ſpout or pipe into the ſaid leaden box in an exact level, and from thence in an equal degree out of the ſaid leaden box by and through the ſaid reſpective ſpouts of the ſaid leaden box reſpectively into the ſaid reſpective parts of the ſaid ciſtern or reſervoir ſo reſpectively allotted to the ſaid plaintiff and defendant, as the reſpective occupiers of the ſaid reſpective meſſuages, one of the ſaid ſpouts of the ſaid leaden box letting out the ſaid rain water into that part of the ſaid ciſtern or reſervoir allotted to the ſaid plaintiff, and the other of the ſaid ſpouts letting out the ſaid rain water into the ſaid part of the ſaid ciſtern or reſervoir ſo allotted to the ſaid defendant, and by reaſon of the ſaid dividing, parting, and allotting of the ſaid ciſtern or reſervoir in manner aforeſaid, ever ſince the ſaid dividing and parting of the ſaid ciſtern or reſervoir hitherto, the ſaid rain water conveyed as aforeſaid from the ſaid tops of the ſaid reſpective meſſuages into the ſaid leaden box, ought to have run in great plenty and abundance from and out of the ſaid leaden box through the ſpout of the ſaid leaden box, being next the ſaid meſſuage of the ſaid plaintiff, into that part of the ſaid ciſtern or reſervoir ſo allotted to the ſaid plaintiff for the neceſſary ſupplying of the ſaid plaintiff and his family, ſo reſiding and dwelling in his ſaid meſſuage, with rain water, to be ſpent and uſed by them in and upon the ſaid meſſuage of the ſaid plaintiff, in and about the neceſſary uſes of the ſaid plaintiff and his family there; yet the ſaid defendant, well knowing, &c. but contriving, &c. to hurt, injure, and prejudice the ſaid plaintiff, and to deprive him

of the benefit and advantage of his ſaid allotment of the ſaid ciſtern or reſervoir, and of the ſaid rain water which from and after the ſaid diviſion and parting of the ſaid ciſtern or reſervoir, ought to have run and come by the means aforeſaid into that part of the ſaid ciſtern or reſervoir ſo allotted to the ſaid plaintiff as aforeſaid, while he the ſaid plaintiff was ſo poſſeſſed of his ſaid meſſuage as aforeſaid, and inhabited therein with his family as aforeſaid, and after the ſaid diviſion and parting of the ſaid ciſtern or reſervoir as aforeſaid, and after the ſaid placing and fixing of the ſaid leaden box upon the ſaid wall for the purpoſe aforeſaid, and before the day of exhibiting, &c. to wit, on the ſaid, &c. at, &c. in, &c. aforeſaid, wrongfully, &c. by them and there wrongfully &c. putting, &c. and cauſing and procuring, &c. certain ſtays, props, nails, and wedges, under that part of the ſaid leaden box ſo placed and fixed upon the ſaid wall for the purpoſe aforeſaid, which ſo was to convey and ought to have conveyed the rain water into that part of the ſaid ciſtern or reſervoir which was and had been on the ſaid diviſion allotted to the ſaid plaintiff in reſpect of his ſaid meſſuage as aforeſaid, and thereby, &c. raiſing and keeping raiſed therewith on that ſide of the leaden box next to that part of the ſaid divided ciſtern or reſervoir ſo allotted to the ſaid plaintiff higher than that ſide of the ſaid leaden box next the part of the ſaid ciſtern or reſervoir ſo allotted to the ſaid plaintiff as aforeſaid, by means whereof that part of the ſaid rain water which during all that laſt-mentioned time ought to have run out of the ſaid leaden box into that part of the ſaid ciſtern or reſervoir ſo allotted to the ſaid plaintiff as the occupier of his ſaid meſſuage, was prevented and hindered from running into the ſaid part of the ſaid ciſtern or reſervoir ſo allotted to the ſaid plaintiff as aforeſaid, and the ſaid plaintiff thereby, during all that time, hath been deprived of the benefit of that part of the ſaid rain water which during that laſt mentioned time ought to have run out of the ſaid leaden box into the ſaid part and diviſion of the ſaid ciſtern or reſervoir ſo allotted to him as aforeſaid, and could not have or enjoy the benefit of that part of the ſaid rain water, or the ſaid allotment of the ſaid ciſtern or reſervoir in ſo large, commodious, and beneficial a manner as he, during all that time, ought to have had and enjoyed the ſame. Damages forty pounds, &c.

The defendant pleaded not guilty, but the plaintiff had a verdict with cheſts damages and coſts

Drawn by MR. WARREN.

Declaration at the ſuit of the landlord of two houſes, for building ſo near to them as to obſtruct the windows lights.

MIDDLESEX, to wit. J S. complains of J H being, &c. for that whereas the ſaid J. S. on the firſt day of May A. D. 1770, and before, was, and yet is ſeiſed of and in divers, to wit, two dwelling-houſes, with the appurtenances, ſituate, ſtanding, and being in the pariſh of St Ann, Limehouſe, otherwiſe St Ann, in the county of Middleſex, in his demeſne as of fee, which

ſaid

ſaid dwelling-houſes, during all the time aforeſaid, were in the reſpective tenures or occupations of R. B. and one J. D. as tenants thereof to the ſaid J. S. And whereas during all the time aforeſaid there were, and of right ought to have been, and yet are and of right ought to be divers, to wit, four windows on the eaſt ſide of the ſaid dwelling-houſes in the occupation of the ſaid R. B. and divers, to wit, two windows on the eaſt ſide of the ſaid dwelling-houſe in the occupation of the ſaid J. D. through which ſaid windows reſpectively the light on the ſaid, &c. came and entered, and of right ought to have come and entered, and from thence hitherto of right ought to come and enter into the ſaid dwelling-houſes reſpectively; yet the ſaid J. H. well knowing, &c. but contriving, &c. to aggrieve the ſaid J. S. in this behalf, and to obſtruct and hinder the light from entering and coming through the ſaid windows into the ſaid dwelling-houſes reſpectively, and to injure the ſaid J. S. in his hereditary eſtate of and in the ſaid dwelling-houſes reſpectively, whilſt the ſaid J. S. was ſeiſed of the ſaid dwelling-houſes reſpectively, and the ſaid dwelling-houſes were to be occupied by the ſaid R. B. and J. D. reſpectively as tenants thereof to the ſaid J. S. as aforeſaid, to wit, on the twenty-eighth day of September, A. D. 1771, at &c. &c. wrongfully and injuriouſly erected and built, and cauſed, &c. a certain erection and building of great height and length, to wit, of the height of twenty-ſix feet, and of the length of fifty-ſix feet, and from thence hitherto hath wrongfully and injuriouſly kept and continued the ſaid erection or building erected and built ſo near unto the ſaid dwelling-houſes of the ſaid J. S. reſpectively, that by reaſon thereof the light, during all the time laſt aforeſaid, hath been and yet is obſtructed and hindered from entering through the ſaid windows into the ſaid dwelling-houſes reſpectively, in ſo ample and beneficial manner as it ought to have done, and the ſaid reſpective dwelling-houſes of the ſaid J. S. were and are thereby greatly diſturbed, and are greatly darkened, and are greatly injured, &c. in value, and the ſaid J. S. is greatly prejudiced in his hereditary eſtate of and in the ſame, to wit, at the ſaid, &c. in, &c. And whereas the ſaid J. S. on the ſaid, &c. and before, was and yet is ſeiſed in his demeſne as of fee of and in divers, to wit, two dwelling-houſes and two yards, with the appurtenances, ſituate, &c. at, &c. in, &c. which ſaid laſt-mentioned dwelling-houſes and yards, during all the time aforeſaid, were in the reſpective tenures or occupations of the ſaid R. B. and J. D. as tenants thereof to the ſaid J. S. And whereas alſo the ſaid J. H. on the ſame, &c. and before, was poſſeſſed of and in a certain piece or parcel of ground lying near unto the ſaid laſt-mentioned dwelling-houſes of the ſaid J. S. towards the weſt, and divided therefrom by a certain way or paſſage, to wit, at, &c. in, &c. and the ſaid J. being ſo ſeiſed of and in the ſaid laſt-mentioned dwelling-houſes and yards, and the ſaid J. H. being ſo poſſeſſed of the ſaid ground, with the appurtenances, as aforeſaid, he the ſaid J. H. afterwards, to wit, on the ſaid, &c. at, &c. wrongfully and injuriouſly newly erected and built, and cauſed, &c. a certain erection or build-

2d Count, for water from new erections.

building, partly upon his ſaid ground, and partly upon the ſaid way or paſſage leading to the ſaid dwelling houſes and yards of the ſaid J. than any building had ever before been erected or built, and hath contrary from thence hitherto continued the ſaid erection or building ſo there wrongfully and injuriouſly erected and built, yet the ſaid J. H well knowing, &c. aforeſaid, but contriving, &c to injure and aggrieve the ſaid J in his hereditary eſtate of and in his ſaid laſt-mentioned dwelling houſes and yards reſpectively on the ſame, &c. at the ſaid, &c. ſo ſituated his ſaid new erection or building, and erected and built the ſame there in ſuch a manner and ſo near unto the ſaid dwelling-houſes and yards of the ſaid J that the rain water which from time to time, from the time of the erecting and building of the ſaid erection or building of the ſaid J H hitherto hath deſcended and fallen on and upon the ſaid new building or erection of the ſaid J H. hath run and flowed from thence on and upon the ſaid laſt mentioned dwelling houſes and yards of the ſaid J. reſpectively, whereby the ſeveral of the ſaid laſt-mentioned dwelling houſes and yards of the ſaid J reſpectively are greatly damaged, decayed, rotted, and ſpoiled, and the ſame meſſuages and yards reſpectively are rendered of leſs uſe to the tenants of the ſaid J as occupiers thereof, and the ſaid J during all the time laſt aforeſaid, hath been and yet is greatly injured in his hereditary eſtate of and in the ſaid laſt-mentioned dwelling houſes and yards reſpectively, and the tenants of the ſaid J. of and in the ſaid reſpective dwelling houſes and yards, have threatened and are about to leave the ſame, to wit, at, &c. And whereas alſo the ſaid J. on, &c. was, and continually from thence hitherto hath been, and ſtill is ſeiſed of and in divers, to wit, two other, &c ſituate, &c in the reſpective, &c all by reaſon thereof the ſaid J. during the time aforeſaid, of right ought to have had, and yet of right ought to have for his tenant, occupiers of the ſaid laſt-mentioned dwelling houſes reſpectively, a certain way from a certain ſtreet at, &c. called Harper ſtreet, otherwiſe Ropemaker's-hall, into and through a certain court or yard unto the ſaid laſt-mentioned dwelling-houſes of the ſaid J reſpectively, and ſo back again by the ſame way from the ſaid laſt-mentioned dwelling-houſes of the ſaid J reſpectively, unto and into the ſaid ſtreet, to go, paſs, and repaſs at all times of the year, at their free will and pleaſure, yet the ſaid J H well knowing, &c but contriving, &c. to aggrieve the ſaid J and to injure him in his hereditary eſtate of and in the ſaid laſt-mentioned dwelling-houſe, and to deprive the tenants of the ſaid J occupiers of the ſaid laſt-mentioned dwelling houſes reſpectively, of the uſe and enjoyment of the ſaid way or paſſage on the ſaid, at, &c. aforeſaid, wrongfully and injuriouſly erected, built, and ſet up, and cauſed, &c. a certain meſſuage or building in and upon a great part of the ſaid court or yard, and kept and continued the ſame ſo there erected, built, and ſet up, for a long time, to wit, from thence hitherto, &c. ſtill encroached upon the ſaid court or yard, by reaſon whereof the

d Count ob ſtructing paſſage r way

the ſaid way or paſſage, during all the time laſt aforeſaid, hath been and is rendered ſo ſtrait and narrow, that the ſaid tenants of the ſaid J. occupiers of the ſaid laſt-mentioned dwelling-houſes of the ſaid J. reſpectively, could not have the uſe and enjoyment of the ſaid way or paſſage in ſo ample and beneficial a manner as they ought to have had, and the ſaid laſt-mentioned dwelling houſes of the ſaid J. reſpectively are thereby rendered almoſt uſeleſs, and the hereditary eſtate of the ſaid J. of and in the ſaid laſt-mentioned dwelling houſes reſpectively, is greatly diminiſhed in value, and the tenants of the ſaid J. occupiers of the ſaid laſt-mentioned dwelling houſes reſpectively, daily threaten to leave the ſame, to wit, at, &c. alſo eſaid. And whereas alſo [ſtate that the plaintiff was ſeiſed of two dwelling-houſes, &c. as in the laſt Count], by reaſon thereof the ſaid J. during all the time aforeſaid of right ought to have had, and yet ought to have for his tenants and occupiers of the ſaid laſt-mentioned dwelling houſes reſpectively, the uſe and privilege of a certain privy or houſe of office ſituate, &c. near unto the ſaid laſt-mentioned dwelling houſes of the ſaid J. at all times of the year at their free will and pleaſure, as belonging and appertaining to the ſaid laſt-mentioned dwelling houſes reſpectively of the ſaid J., yet the ſaid J. H. well knowing, &c. but contriving, &c. to aggrieve the ſaid J. and to injure him in his hereditary eſtate of and in the ſaid laſt mentioned dwelling-houſes reſpectively, and to deprive the tenants of the ſaid J. occupiers of the ſaid laſt-mentioned dwelling houſes reſpectively, of the uſe and enjoyment of the ſaid privy or houſe of office on the ſaid, &c. at, &c. aforeſaid, wrongfully, &c. pulled down, threw down, proſtrated, and deſtroyed, and cauſed, &c. part of the ſaid privy or houſe of office, and kept and continued a great part of the ſaid privy or houſe of office there ſo pulled down, &c. for a long time, to wit, from thence hitherto, by reaſon whereof the occupiers of the ſaid laſt mentioned dwelling-houſes of the ſaid J. reſpectively, during all the time laſt aforeſaid, have been deprived of the uſe and enjoyment of the ſaid privy or houſe of office, and could not uſe the ſame in ſuch manner as they of right ought to have done and ought to do, and the ſaid laſt-mentioned dwelling houſes of the ſaid J. reſpectively are rendered almoſt uſeleſs, and the hereditary eſtate of the ſaid J. of and in the ſaid laſt-mentioned dwelling-houſes reſpectively, is greatly diminiſhed in value, to wit, at the ſaid, &c. in, &c. aforeſaid, whereupon the ſaid J. ſaith he is injured, and hath ſuſtained damage to the value of two hundred pounds, and therefore he brings ſuit, &c.

4th Count, pulling down privy to the houſes.

W. BALDWIN.

SURRY, to wit. Robert Bruce, late of, &c. jailor, was attached to anſwer unto William Bryant, Mary his wife, and Sarah Morris, in a plea of treſpaſs on the caſe, and thereupon the

Declaration in the ſuit of coparceners in fee of copyhold premiſes, and the huſband of one of them, for cutting down trees, and digging in the ſoil with a converſion.

ſaid plaintiffs, by their attorney, complain, that whereas the manor of Banſtead, in the, &c. now is, and from time whereof, &c. hath been an ancient manor, and in the manor of Banſtead there now are, and during all the time aforeſaid have been divers cuſtomary tenements within, and parcel of the ſaid manor aforeſaid, demiſed and demiſeable by copy of the court rolls of the ſaid manor, by the lord of the ſaid manor for the time being, or by his ſteward of the courts of the ſaid manor for the time being, to any perſon or perſons willing to take the ſame in fee ſimple, or otherwiſe, at the will of the ſaid lord, according to the ſaid manor, to wit, at, &c.: And whereas before and at the time of the committing of the grievance hereinafter mentioned, to wit, on, &c. a certain meſſuage or tenement, &c. within the ſaid manor, and abutting, &c. together with the orchard, &c. ſituate, lying, and being in the pariſh of, &c. aforeſaid, and within the ſaid manor, were a cuſtomary tenement of the manor aforeſaid, demiſed and demiſeable, &c. &c. [as before], to wit, at, &c. aforeſaid: And whereas afterwards, and before the committing, &c. to wit, on, &c. at, &c. aforeſaid, Rowland Frye, eſquire, was lord of the ſaid manor of Banſtead, whereof the ſaid cuſtomary tenement was parcel, and the ſaid R. F. eſquire, ſo being lord of the ſaid manor of Banſtead whereof, &c. afterwards, and whilſt he was ſo lord of the ſaid manor, and before the committing, &c. to wit, at the court baron of the ſaid R F. eſquire, holden in and for the manor of Banſtead aforeſaid, on Monday, the eleventh day of April, in the third year of the reign, &c. A. D. 1763, by and before Thurſto Blackman, gentleman, ſteward there, by the copy of the court rolls of the ſaid manor, granted the ſaid cuſtomary tenement, with the appurtenances, to the ſaid M. whilſt ſhe was ſole then Mary Morris, ſpinſter, and to the ſaid S. M. to have and to hold the ſame, with the appurtenances, unto them the ſaid M. and S. M. their heirs and aſſigns for ever, as coparceners of the lord of the ſaid manor, at the will of the lord, according to the cuſtom of the ſaid manor; by virtue whereof the ſaid M. whilſt ſhe was ſole, and the ſaid S. M. afterwards, and before the committing, &c. to wit, on the ſaid, &c. to wit, at, &c. aforeſaid, entered into the ſaid cuſtomary tenement, with the appurtenances, and became and were thereof ſeiſed in their demeſne as of fee at the will of the lord, according to the cuſtom of the ſaid manor; and the ſaid M. and S. being ſo ſeiſed of the ſaid cuſtomary tenement, with the appurtenances, ſhe the ſaid M. afterwards, to wit, on, &c. to wit, at, &c. aforeſaid, intermarried with and took to huſband the ſaid W. B. by means whereof the ſaid W. B. and M. his wife, in right of the ſaid M. became and were ſeiſed in coparcenery with the ſaid S. in their demeſne as of fee at the will of the lord, according to the cuſtom of the manor aforeſaid of the eſtate and intereſt of the ſaid M. to wit, in coparcenery together with the ſaid S. of and in the ſaid cuſtomary tenement, with the appurtenances; and the ſaid W. and M. in right of the ſaid M. and the ſaid S have from thence hitherto been, and ſtill

are

are ſeiſed in their demeſne as of fee at the will of the lord, according to the cuſtom of the ſaid manor of and in the ſaid cuſtomary tenement, with the appurtenances: And the ſaid W. and M. his wife and S. further ſay, that they being ſo ſeiſed as aforeſaid, one Samuel Morris, before and at the time of the committing, &c. and long afterwards, was poſſeſſed of the ſaid cuſtomary tenement, with the appurtenances, to wit, as tenant thereof to the ſaid W. and M. his wife, and S. to wit, at, &c. aforeſaid; yet the ſaid R. well, &c. but contriving, &c. to hurt, injure, and prejudice the ſaid W. and M. his wife, and S. in their hereditary eſtate of and in their aforeſaid cuſtomary tenement, with the appurtenances, and to damage the ſame whilſt they the ſaid W. and M. in right of the ſaid M. and S. were ſo ſeiſed of the cuſtomary tenement, with the appurtenances, and whilſt the ſame was ſo in the poſſeſſion of the ſaid Samuel M. as tenant thereof to them the ſaid W. and M. his wife, and S. as aforeſaid, to wit, on, &c. at, &c. aforeſaid, wrongfully and unjuſtly entered into the ſaid cloſe called, &c. parcel of the ſaid cuſtomary tenement as aforeſaid, and did then and there wrongfully and unjuſtly cauſe and procure to be cut down, &c. divers timber trees and fruit trees, to wit, &c. &c. there then and there ſtanding, growing, and being in the ſaid cloſe called, &c. parcel, &c. and the hard every of the ſaid trees being of a large value, to wit, of the value of forty ſhillings, and took and carried away the ſame, and converted and diſpoſed thereof to his own uſe, and did then and there with ſpades, pickaxes, and other iron inſtruments, wrongfully and unjuſtly dig up, tear up, &c. and wrongfully and unjuſtly cauſe, &c. the ſoil, to wit, one hundred perches of the ſoil of the ſaid W. and M. his wife, and S. in the ſaid cloſe called, &c. parcel, &c. and took and carried away, and cauſed to be taken and carried away the ſoil and earth, to wit, ſix cart loads of the ſoil, &c. of the ſaid W. and M. his wife, each and every of the ſaid cart loads of ſoil, and earth and every of the ſaid cart-loads of earth being of a large value, to wit, of the value of ſhillings, and to convert and diſpoſe the ſame, and convert and diſpoſe thereof to their own uſes, to the great damage and injury of the ſaid W. and M. his wife, and S. and in their hereditary eſtate of and in the ſaid cloſe, parcel, &c. to the damage of the ſaid W. and M. his wife, and S. and contrary to the form of the ſtatute in ſuch caſe made and provided, to wit, at, &c.

And whereas, &c. [the ſecond Count continued the ſame charge as the firſt], the only difference between them was, that the plaintiffs did not in the ſecond ſtate their title ſpecially, as in the firſt, but laid generally (a) that they the plaintiffs, at the time of committing, &c. and long before, were ſeiſed in their demeſne as of fee, at the will of the lord, &c.

(a) Qu. Whether that would not be demurrable?

Plea,

Special pleas thereto deducing a title through several descents to another person, as tenant in tail, under a custom of the manor in the nature of borough English, as servant to whom defendant justifies by the seizin of the plaintiff, protesting against the grant declared by plaintiff, that they were not seized as alledged in the declaration.

Plea, first, not guilty, secondly, as to the several supposed grievances, (after stating that the tenemen, close, and supposed grievances in each of the Counts mentioned, are in fact one and the same, and confessing the existence of the manor, and that within the said manor there are divers customary tenements demised and demiseable, &c. as stated in the declaration, the defendant, by way of justification, pleaded as follows) Yet for plea in this behalf, the defendant saith, that the said customary tenements, with the appurtenances, in the said declaration mentioned, and in which, &c. now is, and for a long time before and on the twelfth day of October, which was in A. D 1664, and from thence until and at the time of the committing, &c. in the said declaration mentioned, was, and from thence hitherto hath been, and still is within and part and parcel of the manor of Banstead aforesaid, in the said declaration mentioned, and a customary tenement of that manor, demised and demiseable by copy of the court rolls of the said manor for the time being, or by his steward of the courts of the said manor for the time being, to any person or persons willing to take the same in fee simple or otherwise, at the will of the lord, according, &c. to wit, at, &c aforesaid. And the said defendant further saith, that *within the said manor of Banstead there is, and from time whereof, &c. there hath been a certain custom and usage there used and approved of, that is to say, that if any person or persons in fee simple or fee tail at the will of the lord, according, &c. of any customary tenement, with the appurtenances, lawfully of the said manor, hath died seized thereof, leaving issue one or more of his or her lawfully begotten heir or heirs, then in all and every such case, every such customary tenement, with the appurtenances, descends and ought to descend, and hath usually descended to the eldest son of every such tenant, and the eldest heir of such tenant, according to the custom of the said manor, ought to be admitted, and hath been used and accustomed to be admitted, according to the form and effect of the said custom, right and lawful heir of the said manor, and ought to have all and singular the messuages, lands, tenements, and hereditaments with the appurtenances, whereof his father was seized as aforesaid, to have and to hold the same unto such son and heir accordingly, at the will of the lord according, &c. to wit, at the parish aforesaid.* And the said defendant further saith, that long before the committing, &c. in the said declaration mentioned, to wit, on the said, &c. at, &c. aforesaid, one A. B. was seized of the manor aforesaid, with the appurtenances, in his demesne as of fee, and was lord of the said manor of Banstead, whereof the said customary tenement, with the appurtenances in the said declaration mentioned, and in which, &c. then was and yet is parcel, and the said A. B. so being seized, and lord of the said manor, whereof, &c. afterwards, and whilst he was so seized and lord of the said manor, and long before the committing, &c. in said declaration mentioned, to wit, at the court baron of the said A. B. so then being lord of the said manor of Banstead holden in and for the said manor, on Monday, the said, &c. aforesaid, by Edward Thurland, esq. his steward there,

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by the copy of the court rolls of the ſaid manor granted the ſaid cuſtomary tenement, with the appurtenances, in the ſaid declaration mentioned, and in which, &c. to Andrew Stephens, deceaſed, in his lifetime, and Ann his wife alſo deceaſed, in her lifetime, to have and to hold to the ſaid Andrew Stephens and Ann his wife, and the heirs of their bodies lawfully begotten or to be begotten, and for default of ſuch iſſue, to the uſe and behoof of the ſaid heirs of the ſaid Andrew Stephens for ever, at the will of the lord, according, &c. by virtue of which ſaid grant the ſaid Andrew Stephens in his lifetime, and A. his wife in her lifetime, afterwards, and long before the committing, &c. to wit, on the ſaid, &c. aforeſaid, entered into the ſaid cuſtomary tenement, with the appurtenances, in the ſaid declaration mentioned, and in which, &c. ſo granted as aforeſaid, and became and were thereof ſeiſed in their demeſne as of fee tail, at the will of the lord, according, &c. And the ſaid defendant further ſaith, that the ſaid Andrew Stephens and A. his wife being ſo ſeiſed of the ſaid cuſtomary tenement, with the appurtenances in the ſaid declaration mentioned, and in which, &c. after the ſaid grant, and whilſt they were ſo ſeiſed of the ſaid cuſtomary tenement, with the appurtenances in the ſaid declaration mentioned, and in which, &c. and long before the committing, &c. to wit, on the ſaid, &c. at, &c. aforeſaid, the ſaid Andrew Stephens and Ann his wife died, and each of them died, and that the ſaid Ann Stephens, who ſurvived the ſaid Andrew Stephens, left at the time of her death a *youngeſt* ſon, (ACCORDING TO THE CUSTOM OF THE SAID MANOR, AN) heir on her body by the ſaid Andrew Stephens lawfully begotten her ſurviving, that is to ſay, one William Stephens, to wit, at, &c. aforeſaid, and that the ſaid William Stephens, after the death of the ſaid Andrew Stephens and A. his wife, to wit, on the ſaid, &c. at the, &c. aforeſaid, as *young*eſt [SUCH] ſon and heir of the bodies of the ſaid Andrew Stephens and A. his wife lawfully begotten, entered into, and thereupon became and was ſeiſed of and in the ſaid cuſtomary tenement, with the appurtenances in the ſaid declaration mentioned, and in which, &c. in his demeſne as of fee tail, at the will of the lord, according to the cuſtom of the ſaid manor. And the ſaid defendant further ſaith, that the ſaid William Stephens being ſo ſeiſed of the cuſtomary tenement, with the appurtenances in the ſaid declaration mentioned, and in which, &c. as aforeſaid, he the ſaid William Stephens afterwards, and whilſt he was ſo thereof ſeiſed, and long before the committing, &c. to wit, on the ſaid, &c. at, &c. aforeſaid, died, leaving at the time of his death a *youngeſt* ſon [ACCORDING TO THE CUSTOM OF THE SAID MANOR, AN] heir of his body lawfully begotten, that to ſay, one John Stephens him ſurviving, to wit, at, &c. aforeſaid. And the ſaid defendant further ſaith, that upon the death of the ſaid William Stephens as aforeſaid, the ſaid John Stephens then and there, to wit, on the day and year laſt aforeſaid, as (SUCH) *youngeſt* ſon and heir of the ſaid William Stephens lawfully begotten

ten, entered into and became and was ſeiſed, &c. (as before): And the ſaid defendant further ſaith, that the ſaid John Stephens being ſo ſeiſed of the ſaid cuſtomary tenement, with the appurtenances in the ſaid declaration mentioned, and in a certain, &c. as aforeſaid, he the ſaid John Stephens afterwards, and whilſt he was ſo thereof ſeiſed, and long before the committing, &c. to wit, on the thirtieth day of September A. D. 1770, at, &c. aforeſaid, died, leaving at the time of his death *a youngeſt* ſon, and [ACCORDING TO THE CUSTOM OF THE SAID MANOR, AN] heir of his body lawfully begotten, that is to ſay, one William Stephens him ſurviving, to wit, at, &c. aforeſaid. And the ſaid defendant further ſaith, that upon the death of the ſaid John Stephens as aforeſaid, the ſaid laſt-mentioned William Stephens then and there, to wit, on the day and year laſt aforeſaid, at, &c. as *youngeſt* [SUCH] ſon and heir of the body of the ſaid John Stephens lawfully begotten, entered into and became and was ſeiſed of and in the ſaid cuſtomary tenement, with the appurtenances as aforeſaid in the ſaid declaration mentioned, and in which, &c. in his demeſne as of fee tail, at the will of the lord, according, &c. and from thence hitherto hath been, and ſtill is ſeiſed thereof, to wit, at, &c. aforeſaid. And ſo the ſaid defendant further ſaith, that the ſaid cuſtomary tenement, with the appurtenances in the ſaid declaration mentioned, and in which, &c. long before and at the ſaid time when, &c. in the ſaid declaration mentioned, was and ſtill is the cuſtomary tenement of the ſaid laſt-mentioned William Stephens at the will of the lord, according, &c. to wit, at, &c. aforeſaid, for which reaſon he the ſaid Iſaac, as the ſervant of the ſaid laſt-mentioned William Stephens, and by his command, at the ſaid time when, &c. in the ſaid declaration mentioned, entered the ſaid cloſe called the Orchard in the ſaid declaration mentioned, and in which, &c. as being the cloſe of the ſaid laſt-mentioned William Stephens, and parcel of his ſaid cuſtomary tenement, with the appurtenances, and cut down, &c. and ſet up, &c. &c. as he lawfully might for the cauſe aforeſaid, which, &c. &c. whereof, &c. without this, that before or at the time of committing, &c. in the ſaid declaration mentioned, or at any time afterwards, the ſaid plaintiffs were ſeiſed in their demeſne as of fee at the will of the lord, according, &c. aforeſaid, of and in the ſaid cuſtomary tenement, with the appurtenances in the ſaid declaration mentioned, and in which, &c. as the ſaid plaintiffs have above in their ſaid declaration in that behalf alledged, and this, &c. wherefore, if, &c. [3d Plea was exactly ſimilar to the ſecond, except only that the cuſtom for the copyholds deſcending to the youngeſt ſon was not repeated, and that the words in ſmall capitals, and included in crochets, which are not in the ſecond plea, are introduced in the third, inſtead of thoſe in Italic, which ſtand in the ſecond plea, but are omitted in the third.] [4th, admitting as in the ſecond and third pleas, and alſo that the ſaid premiſes in the declaration mentioned, before and at the time of the committing of the ſaid, &c.

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in the ſaid declaration mentioned, were a cuſtomary tenement of the minor aforeſaid, demiſed and demiſeable as the ſaid plaintiffs have above in the ſaid declaration in that behalf alledged; yet proteſting that the ſaid R. F. in the ſaid declaration mentioned did not grant the ſaid cuſtomary tenement, with the appurtenances, to the ſaid M and S in manner and form as the ſaid plaintiffs have above in their ſaid declaration in that behalf alledged, yet for plea in this behalf the ſaid defendant ſaith, that before and at the time of the committing, &c. in the ſaid declaration mentioned, or at any time afterwards, the ſaid plaintiffs were not ſeiſed in their demeſne as of fee at the will, &c. of and in the ſaid cuſtomary tenement, with the appurtenances in the ſaid declaration mentioned, and in which, &c. is the ſaid plaintiffs have above in their ſaid declaration in that behalf alledged, and of this, &c.] [5th plea admits the plaintiff's title and the tenancy of their leſſee, and ſets forth a licence from ſuch leſſee to the defendant, under which the defendant juſtifies the entry] [6th is a juſtification of the entry, and the defendant therein admits the grant to the plaintiff,] yet for plea in this behalf the ſaid defendant ſaith, that before the committing, &c. to wit, on, &c. at, &c. they the ſaid plaintiffs demiſed the cuſtomary tenement, with the appurtenances, in the ſaid declaration mentioned, and in which, &c. unto one William Morris, to hold the ſame unto the ſaid William Morris and his aſſigns from the day and year laſt aforeſaid forth and during, and unto the full end and term of one whole year from thence next enſuing and fully to be complete and ended, and after the end and expiration of the ſaid term of one year it is lawful for the ſaid plaintiffs from year to year for ſo long time as the ſaid William Morris and his aſſigns ſhould please the ſaid plaintiffs ſhould please, by virtue of which ſaid demiſe the ſaid William Morris afterwards, and before the committing, &c. to wit, on, &c. at, &c. aforeſaid, entered into and upon the ſaid cuſtomary tenement, with the appurtenances, in the ſaid declaration mentioned, and in which, and became and was thereof poſſeſſed, and being ſo thereof poſſeſſed, he the ſaid William Morris afterwards, and before the committing, &c. to wit, on, &c. at, &c. aforeſaid, demiſed and cleſcribed the Orchard, with the appurtenances, parcel of the ſaid cuſtomary tenement, with the appurtenances in the ſaid declaration mentioned and in which, &c. to the ſaid defendant, to hold the ſame unto the ſaid defendant as tenant thereof to him the ſaid W. M. from thenceforth for ſo long time as the ſaid defendant and the ſaid W. M. ſhould please, by virtue of which ſaid laſt mentioned demiſe he the ſaid defendant afterwards, to wit, on, &c. being the ſaid time when, &c. to wit, at, &c. aforeſaid, entered into and upon the ſaid cloſe called, &c. parcel, &c. and in which, &c. ſo demiſed to him as aforeſaid, and as he lawfully might for the cauſe aforeſaid, which is the ſame, &c. whereof, &c.; and this, &c., wherefore, &c. if, &c.

Juſtification of the entry under a demiſe at will to the defendant by plaintiff's leſſee from year to year.

C. RUNNINGTON.

LONDON,

Declaration, plaintiff and defendant being poſſeſſed of two houſes contiguous to each other, the defendant wiſhed to rebuild his, whereby he pulled down the party-wall which ſeparated the two houſes by means whereof the plaintiff's houſe was laid open, and his tenant quitted, defendant did not rebuild the wall within a reaſonable time whereby the plaintiff loſt the profit of his houſe.

LONDON, to wit. Samuel Bevington complains of Edward Lowery the elder, eſquire, being in the cuſtody of the marſhal of the marſhalſea of our lord the king, before the king himſelf, for that whereas the ſaid Samuel Bevington, on the firſt day of January 1771, and long before, was, and from thence hitherto hath been, and ſtill is lawfully poſſeſſed of and entitled unto a certain meſſuage or dwelling houſe, with the appurtenances, ſituate, ſtanding, and being in Lombard Street, in the pariſh of All allows, in the ward of Langbourn, in London aforeſaid, for the reſidue and remainder of a certain long term of years then and yet to come and unexpired, to wit, for the reſidue and remainder of a certain term of twenty years and three quarters of a year, commencing from and immediately after the twenty-fourth day of June, which was in the year of Our Lord 1756, which ſaid meſſuage or dwelling houſe, with the appurtenances, before the time of committing of the grievance hereafter next mentioned, was in the tenure or occupation of one Robert Wilſon, as tenant thereof to the ſaid Samuel Bevington, that is to ſay, as tenant at will thereof, and at a certain rent therefore payable by the ſaid Robert Wilſon to the ſaid Samuel Bevington for the ſame, *to wit, at the rate of a yearly rent of fifty pounds*, that is to ſay, at London aforeſaid, in the pariſh and ward aforeſaid. And whereas the ſaid Edward Lowery heretofore, to wit, on the ſaid firſt day of January, in the year 1771 aforeſaid, and from thence until and at and after the committing of the grievance hereafter next mentioned, was the owner or proprietor of a certain piece of ground whereon a certain other meſſuage or dwelling houſe did then lately ſtand, ſituate in London aforeſaid, in the pariſh and ward aforeſaid, contiguous and adjoining to the ſaid meſſuage or dwelling houſe of the ſaid Samuel Bevington, and which ſaid two ſeveral meſſuages or dwelling-houſes then were, whilſt the ſaid Samuel Bevington was ſo poſſeſſed of and entitled to his ſaid meſſuage or dwelling houſe, ſeparated and divided from each other by a certain wall, called and being a partition or party-wall, to wit, at London aforeſaid, in the pariſh and ward aforeſaid. And whereas whilſt the ſaid Samuel Bevington was ſo poſſeſſed of and entitled to his ſaid meſſuage or dwelling-houſe, and whilſt the ſame ſo was in the tenure or occupation of the ſaid Robert Wilſon as tenant thereof to the ſaid Samuel Bevington, and whilſt the ſaid Edward Lowery was the owner or proprietor of his ſaid premiſes, and whilſt the ſaid party wall was ſtanding, and before the committing of the grievance hereafter next mentioned, to wit, on the tenth day of December, in the year 1771 aforeſaid, at London aforeſaid, in the pariſh and ward aforeſaid, he the ſaid Edward Lowery, intending to build a houſe on his ſaid ground contiguous to the ſaid meſſuage or dwelling-houſe of the ſaid Samuel Bevington, thought it neceſſary to pull down the party-wall, and to rebuild the ſame, and thereupon he the ſaid Edward Lowery afterwards, to wit, on the day and year

laſt

laſt aforeſaid, at London aforeſaid, in the parish and ward aforeſaid, according to the tenor and direction of the ſtatutes in ſuch caſe made and provided, gave "three months notice to the ſaid R. W the occupier of the ſaid meſſuage or dwelling-houſe of the ſaid Samuel Bevington," of his the ſaid Edward Lowery's intention to have the ſaid party-wall might be ſurveyed according to the true intent and direction of the aforeſaid ſtatutes, to wit, for the purpoſe of pulling down and rebuilding the ſame, if the ſurveyors to be appointed for the ſurveying thereof ſhould certify that the ſame ought to be pulled down and rebuilt. And whereas afterwards, to wit, on the 10th day of March, in the year of Our Lord 1772, at London aforeſaid, in the parish and ward aforeſaid, the ſaid wall was ſurveyed by the ſurveyors duly appointed for that purpoſe according to the tenor and direction of the ſtatutes aforeſaid, who reported certain the ſtate and condition thereof, and whether the ſame ought to be pulled down and rebuilt. And whereas the ſaid ſurveyors, or the major part of them did afterwards, to wit, after having viewed the ſaid wall for the purpoſe aforeſaid, to wit, on the twenty-firſt day of March, in the year 1772 aforeſaid, certified according to the tenor and direction of the ſaid ſtatutes, certain the ſtate and condition of the ſaid wall, and that the ſame ought to be pulled down and rebuilt. And whereas the ſaid Edward Lowery, having conformed to the directions of the ſtatutes aforeſaid in that behalf, obtained a power and authority to pull down the ſaid wall and rebuild the ſame, he the ſaid Edward Lowery afterwards, to wit, on the firſt day of May, in the year 1772 aforeſaid, at London aforeſaid, in the parish and ward aforeſaid, under and by virtue of the aforeſaid ſtatutes, prepare to pull down the ſaid wall for the purpoſe of rebuilding the ſame, and did find that the ſaid meſſuage or dwelling-houſe of the ſaid Samuel Bevington would be untenantable and not fit for habitation during the time the ſaid party wall ſhould be pulling down and until the ſame ſhould be rebuilt, the ſaid Robert Williams tenant to the ſaid Samuel Bevington of his ſaid meſſuage or dwelling-houſe, afterwards, and juſt before the ſaid party-wall was pulled down, to wit, on the fifteenth day of May, in the year of Our Lord 1772 aforeſaid, quitted the ſaid meſſuage or dwelling-houſe, and yielded up the poſſeſſion thereof to the ſaid Samuel Bevington, to wit, at London aforeſaid, in the parish and ward aforeſaid, whereupon he the ſaid Edward Lowery afterwards, to wit, on the ſixteenth day of May, in the year 1772 aforeſaid, to wit, at London aforeſaid, in the parish and ward aforeſaid, did cauſe the ſaid party-wall to be pulled down, that is to ſay for the purpoſe of rebuilding the ſame, by means whereof the ſaid meſſuage or dwelling houſe of the ſaid Samuel Bevington then and there became and was untenantable and unfit for habitation, and ſo continued until the ſaid party-wall was rebuilt, to wit, at London aforeſaid, in the parish and ward aforeſaid And whereas the ſaid Edward Lowery, having ſo pulled down the ſaid party-

party-wall under and by virtue of the ſtatutes aforeſaid, for the purpoſe aforeſaid, ought to have rebuilt the ſame within a reaſonable time then next following; yet the ſaid Edward Lowery, well knowing the premiſes, but contriving and wrongfully and unjuſtly intending to injure him the ſaid Samuel Bevington, and to deprive him of the uſe of his ſaid meſſuage or dwelling houſe, and of the rents, iſſues, and profits thereof, but continuing the ſame untenantable for a much longer time than was reaſonable, neceſſary, or requiſite for the rebuilding of the ſaid party wall, and thereby to injure the ſaid Samuel Bevington in his eſtate of and in his ſaid meſſuage or dwelling houſe, he the ſaid Edward Lowery did not rebuild or cauſe to be rebuilt the aforeſaid party-wall in a reaſonable time from the pulling down of the ſame, but on the contrary thereof wrongfully and unjuſtly refuſed to rebuild the ſame for a reaſonable time, neceſſary, or requiſite for the rebuilding thereof, to wit, for the ſpace of two years longer than was reaſonable, neceſſary, or requiſite for the rebuilding of the ſame, whereby the ſaid Edward Lowery was not, during all or any part of the time aforeſaid, hindered or prevented from rebuilding the ſame by the ſaid Samuel Bevington, or by any other perſon or perſons claiming by, from, under, or by means of him, *or by any other perſon under whom the ſaid Samuel Bevington claimed*, by means of which premiſes the ſaid meſſuage or dwelling houſe of the ſaid Samuel Bevington, during all the time aforeſaid, continued untenantable and not fit for habitation, and the ſaid Samuel Bevington was thereby, during all the ſaid time, hindered and prevented from letting his ſaid meſſuage or dwelling-houſe to any perſon or perſons whomſoever, and from deriving any part of the rents and profits of the ſame, and thereby the ſaid Samuel Bevington, during all the time aforeſaid, loſt the rents, iſſues, and profits of his ſaid meſſuage or dwelling houſe, and by means of the ſeveral premiſes aforeſaid the ſaid Samuel Bevington was and is otherwiſe greatly injured and damnified in his eſtate of and in his ſaid meſſuage or dwelling houſe, to wit, at London aforeſaid, in the pariſh and ward aforeſaid. And whereas, &c. &c.

1st Count.

[the ſecond Count is ſimilar to the firſt throughout, with no other alteration than the omiſſion of the parts in Italic, and inſtead of ſaying as between inverted commas, that the defendant "within months notice to the plaintiff as aforeſaid, by himſelf and his agents, gave due notice of his intention to the ſaid Samuel Bevington, before and at the time of the committing of the grievances hereinafter next mentioned, was lawfully poſſeſſed of and entitled unto a certain other meſſuage or dwelling houſe, with the appurtenances ſituate, ſtanding, and being in Lombard ſtreet aforeſaid, to wit, in London aforeſaid, in the pariſh and ward aforeſaid, for the reſidue and remainder of a certain long term of years then yet to come and unexpired, to wit, for the reſidue and remainder of a certain term of twenty years and three quarters of a year, commencing from and immediately after the twenty-fourth day of June, which was

2d Count.

in the year of Our Lord 1756, which ſaid laſt-mentioned meſſuage or dwelling-houſe with the appurtenances, before and at the time of the committing of the grievance hereafter mentioned, *was of a large yearly value*, to wit, of the yearly value of ſixty-five pounds, to wit, at London aforeſaid, in the pariſh and ward aforeſaid: And whereas before and at the time of the committing of the grievance hereafter mentioned, the ſaid Edward Lowery was *within the intent and meaning of the ſtatutes in ſuch caſe made and provided*, the owner or proprietor of a certain other piece of ground whereon a certain other meſſuage or dwelling-houſe had lately ſtood, ſituate in London aforeſaid, in the pariſh and ward aforeſaid, contiguous and next adjoining to the ſaid meſſuage or dwelling-houſe of the ſaid Samuel Bevington, and which ſaid two ſeveral meſſuages or dwelling-houſes had been, whilſt the ſaid Samuel Bevington was ſo poſſeſſed of and entitled unto his ſaid meſſuage or dwelling-houſe, ſeparated and divided from each other by a certain wall called and being a partition or party-wall, to wit, at London aforeſaid, in the pariſh and ward aforeſaid: And whereas the ſaid Edward Lowery, intending to build a houſe on his ſaid ground contiguous to the meſſuage or dwelling-houſe of the ſaid Samuel Bevington, whilſt the ſaid Samuel Bevington was ſo poſſeſſed of and entitled unto his ſaid meſſuage or dwelling-houſe with the appurtenances, and whilſt the ſaid Edward Lowery ſo was the owner or proprietor of his ſaid piece of ground, and whilſt the ſaid party-wall was ſtanding, and before the committing of the grievance hereafter next mentioned, to wit, on the ſixteenth day of May, in the year 1772, at London aforeſaid, in the pariſh and ward aforeſaid, he the ſaid Edward Lowery, ſo being the owner and proprietor of his ſaid piece of ground, and the ſame party-wall being ſtanding, did, under and by virtue of the ſtatutes in ſuch caſe made and provided, and according to the tenor thereof, as ſuch owner or proprietor of his ſaid piece of ground (the ſtate and condition of the ſaid party-wall having been under and by virtue of the ſaid ſtatutes and according to the tenor thereof duly certified to be ſuch as that the ſame ought to be pulled down and rebuilt), cauſe the ſaid party-wall to be pulled down, that is to ſay, for the purpoſe of rebuilding the ſame, by means whereof the ſaid meſſuage or dwelling-houſe of the ſaid Samuel Bevington then and there became and was untenantable and unfit for habitation, and ſo continued until the ſaid party-wall was rebuilt, to wit, at London aforeſaid, in the pariſh and ward aforeſaid: And whereas the ſaid E. having ſo pulled down the ſaid party-wall under and by virtue of the ſtatutes aforeſaid, for the purpoſe aforeſaid, ought to have rebuilt the ſame within a reaſonable time then next following; yet the ſaid E. Lowery, well knowing the premiſes, but contriving, &c. &c. [as in the ſecond Count to the end.] Damages three hundred pounds, &c.

J. MORGAN.

The defendant pleaded not guilty.

Trinity Term, 27. Geo. III.

Declaration for digging a hole and throwing ſtones and rubbiſh into an ancient drain which ran along defendant's land, and ſtopped the water from off plaintiff's land and coal pits, by which the water was pent up and driven back into the coal pits, and for turning the water of a rivulet out of its uſual courſe into a certain canal, and thence into the ſaid drain, from which it was forced and driven into the coal pits

STAFFORDSHIRE, to wit. William Roſton and Joſeph Lovall complain of Samuel Bamford, Elias Goodwin, John Hall, Edward Turner, Joſeph Salt, and Joſeph Howlett, being, &c.; for that whereas the ſaid plaintiffs, on the firſt of January 1785, and long before were, and continually from thenceforth hitherto have been, and ſtill are lawfully poſſeſſed of and in a certain cloſe or field called Parſons Field, containing divers, to wit, twenty acres of land, and of divers, to wit, five ancient coal pits or collieries in the ſaid cloſe or field, ſituate, lying, and being at the pariſh of Dithome, in the ſaid county of Stafford. And whereas the water from time to time ariſing and coming in and from the ſaid coal pits or collieries, from time whereof the memory of man is not to the contrary, hath been uſed and accuſtomed to run and flow, and ſtill of right ought to run and flow from the ſaid coal pits or collieries in the ſaid cloſe or field unto, into, through, over, and paſt a certain cloſe of the ſaid defendants called the Rough Field, in a certain ancient gutter, ſlough, or drain, to wit, at the pariſh of Dithome aforeſaid, in the ſaid county. And whereas the ſaid plaintiffs, and all other the tenants and occupiers of the ſaid coal pits or collieries, with the appurtenances, for the time being, from time whereof, &c. until the time of the grievance hereinafter next mentioned, had and uſed, and were accuſtomed to have and uſe, and the ſaid plaintiffs yet of right ought to have the uſe and benefit of the ſaid gutter, ſlough, or drain, for the draining, conveying, and carrying off and from the ſaid coal pits or collieries the water ariſing and coming in and from the ſaid coal pits or collieries, to wit, at the pariſh of Dithome aforeſaid, in the ſaid county. And whereas the water of a certain ſtream or rivulet called Godly Brook, otherwiſe Sweatly Brook, from time immemorial until the time hereinafter next mentioned, hath run, flowed, and been uſed and accuſtomed to run and flow, and ſtill of right ought to run and flow in its ancient and uſual courſe from Godly Wood, otherwiſe Sweatly Wood in the pariſh of Dithome aforeſaid, in the ſaid county, down to and paſt a certain cloſe of meadow called Old Corn Meadow, to wit, at the pariſh of Dithome aforeſaid, in the ſaid county. And whereas alſo the water from a certain other ſtream or water courſe called the Old Water Courſe, from time immemorial until the time hereinafter next mentioned, hath run and flowed, and been uſed and accuſtomed to run and flow, and ſtill of right ought to run and flow in its ancient uſual courſe from the ſaid Godly Wood, otherwiſe Sweatly Wood, in the pariſh of Dithome aforeſaid, in the ſaid county, down to and paſt the ſaid cloſe called Rough Field, to wit, in the pariſh of Dithome aforeſaid, in the ſaid county, nevertheleſs the ſaid defendant, well knowing the premiſes, but wrongfully, maliciouſly, and injuriouſly intending and deviſing to hurt, injure, prejudice, and damnify the ſaid plaintiffs in this behalf, and ſpoil, ruin, and deſtroy the aforeſaid coal pits or collieries, and to prevent and hinder them the

the ſaid plaintiffs from working the ſame, and thereby to deprive them of all the benefit and advantage accruing and ariſing therefrom, afterwards, and whilſt the ſaid plaintiffs were ſo poſſeſſed of the ſaid cloſe or field of land called Parſons Cloſe, and of the ſaid coal pits or collieries therein as aforeſaid, to wit, on the firſt of January 1785, at the pariſh of Dithome aforeſaid, in the ſaid county, maliciouſly, wrongfully, and injuriouſly dug and made, and cauſed and procured to be dug and made a certain pit or hole in and acroſs the ſaid gutter, ſlough, or drain, in the ſaid cloſe of the ſaid defendants, and then and there kept and continued the ſaid pit or hole ſo dug and made as aforeſaid in and acroſs the ſaid gutter, ſlough, or drain, from the day and year laſt aforeſaid until the day of the exhibiting of the bill of the ſaid plaintiffs, and then and there wrongfully, maliciouſly, and injuriouſly put, laid, and placed divers large quantities of earth, ſtones, gravel, and rubbiſh, in and acroſs the ſaid gutter, ſlough, or drain in the ſaid cloſe of them the ſaid defendants, and then and there kept and continued the ſaid earth, ſtones, gravel, and rubbiſh in and acroſs the ſaid gutter, ſlough, and drain from the day and year laſt aforeſaid until the day of the exhibiting of the bill of the ſaid plaintiffs, whereby and by reaſon whereof divers large quantities of water, from time to time ariſing and coming in and from the ſaid coal pits or collieries during the time laſt aforeſaid, which ought to have run and flowed from the ſaid coal pits or collieries into and through the ſaid gutter, ſlough, or drain down to, over, and paſt the ſaid cloſe of the ſaid defendant, was then and there prevented and ſtopped from running into, through, and along the ſaid gutter, ſlough, or drain down to, over, and paſt the ſaid pit or hole ſo dug and made as aforeſaid, and was then and there, by reaſon thereof, put up, and forced and driven back into the ſaid coal pits or collieries, and the ſaid coal pits or collieries were thereby then and there filled up, choaked up, damaged, injured, and deſtroyed, and alſo afterwards, to wit, on the ſame firſt of January 1785, and on divers other days and times between that day and the day of exhibiting of the bill of the ſaid plaintiffs, maliciouſly, wrongfully, and injuriouſly diverted and turned, and cauſed and procured to be diverted and turned divers large quantities of water from and out of the ſaid ſtream or rivulet called Godly Brook, otherwiſe Sweatly Brook, from and out of the ancient or uſual courſe of the ſame unto and into a certain navigation or canal near to and adjoining to the ſaid gutter, ſlough, or drain, and ſo from thence into the ſaid gutter, ſlough, or drain, whereby the ſaid water, ſo wrongfully and injuriouſly diverted and turned as laſt aforeſaid, was diverted and turned into the ſaid gutter, ſlough, or drain, and forced up and driven up the ſame unto and into the ſaid cloſe or field called Parſons Field, and unto and into the ſaid coal pits or collieries, and the ſaid coal pits or collieries thereby then and there filled up, choaked up, damaged, injured, and deſtroyed, and alſo then and there, to wit, on the ſame firſt

of January 1785, and on divers other days and times between that day and the day of the exhibiting of the bill of the ſaid plaintiffs, maliciouſly, wrongfully, and injuriouſly diverted and turned divers other large quantities of water from the ſaid ſtream or water courſe called the Old Watercourſe, and from and out of the uſual and ordinary courſe of the ſame unto and into the ſaid gutter, ſlough, or drain, whereby and by reaſon whereof the ſaid water ſo wrongfully and injuriouſly diverted and turned as laſt aforeſaid, was diverted and turned into the ſaid gutter, ſlough, or drain, and was thereby forced and driven up the ſame unto and into the ſaid cloſe or field called Parſons Field, and unto and into the ſaid coal pits or collieries, by reaſon and means of all which ſaid premiſes the ſaid coal pits or collieries were thereby then and there filled up, choaked up, damaged, injured, and deſtroyed, and the ſaid plaintiffs during all the time aforeſaid were prevented and hindered, and ſtill are prevented and hindered from working in the ſaid coal pits or collieries, or any or either of them, and from getting any coal from any or either of them, and have thereby loſt and been deprived of great gains, profits, and advantages, which they would otherwiſe have received and obtained from the working of the ſaid coal pits or collieries, and have otherwiſe been greatly injured, prejudiced and damnified by reaſon of the premiſes aforeſaid, to wit, at the pariſh of D aforeſaid, in the ſaid county

2d Count, turning the water of the rivulet, &c

And whereas alſo the ſaid plaintiffs afterwards, to wit, on the ſaid firſt of January 1785, and long before, were, and continually from thenceforth hitherto have been, and ſtill are lawfully poſſeſſed of and in a certain other cloſe or field called Parſons Field, containing divers, to wit, twenty acres of land, and of and in divers, to wit, five other inclement coal pits or collieries in the ſaid laſt-mentioned cloſe or field, ſituate, lying, and being in the pariſh of Dithorne aforeſaid, in the ſaid county And whereas the ſaid defendants, during the time laſt aforeſaid, were, and ſtill are poſſeſſed of a certain other cloſe called the Rough Field, next and adjoining to the ſaid laſt-mentioned field called Parſons Field, and near to the ſaid laſt mentioned coal pits or collieries, to wit, at the pariſh of Dithorne aforeſaid, in the ſaid county And whereas the water of a certain ancient watercourſe called the Old Watercourſe, from time immemorial until the times hereinafter mentioned, hath run and flowed, and been uſed and accuſtomed to run and flow, and of right ought to run and flow in its ancient and uſual courſe from Godly Brook, otherwiſe Sweatly Brook, in the pariſh of Dithorne aforeſaid, in the ſaid county, to, by, and paſt the ſaid laſt-mentioned cloſe called Rough Field, to wit, at the pariſh of Dithorne aforeſaid, in the ſaid county, yet the ſaid defendants, well knowing the premiſes laſt aforeſaid, but wrongfully, injuriouſly, and maliciouſly intending and deviſing to hurt, injure, prejudice, and damnify the ſaid plaintiffs in this behalf, and to ſpoil, ruin, and deſtroy the ſaid laſt-mentioned coal pits or collieries, and to prevent and hinder them

the ſaid plaintiffs from working the ſame, and thereby to deprive them of all the benefit and advantage accruing and ariſing therefrom, afterwards, and whilſt the ſaid plaintiffs were ſo poſſeſſed of the ſaid laſt-mentioned cloſe or field of land called Parſons Field, and of the ſaid laſt-mentioned coal pits or collieries therein as laſt aforeſaid, to wit, on the firſt of January 1765, at the pariſh of Dithome aforeſaid, in the ſaid county, maliciouſly, wrongfully, and injuriouſly dug and made, and cauſed and procured to be dug and made a certain cut or canal, extending from the ſaid ſtream or water courſe called the Old Watercouſe into the ſaid laſt mentioned field called the Rough Field, and nearer to the ſaid laſt-mentioned coal pits or collieries than the ſaid laſt-mentioned ſtream or water courſe, and at the end of the ſaid laſt-mentioned cut or canal, maliciouſly, wrongfully, and injuriouſly dug and made, and cauſed and procured to be dug and made a certain pit or hole, and by reaſon and means of the ſaid cut or canal, and pit or hole, maliciouſly, wrongfully, and injuriouſly diverted and turned the water of the ſaid laſt-mentioned ſtream or water courſe into the ſaid cut or canal and pit or hole, and then and there wrongfully and injuriouſly kept and continued the ſaid laſt mentioned cut or canal and pit or hole ſo dug and made as laſt aforeſaid continually from thenceforth hitherto, whereby and by means whereof the water of the ſaid laſt-mentioned ſtream or water courſe, during all the time laſt aforeſaid, was diverted and turned into the ſaid cut or canal and pit or hole, and the ſaid water ſo diverted and turned as laſt aforeſaid, during all the time laſt aforeſaid, oozed, penetrated, and flowed from thence into and unto the ſaid laſt mentioned coal pits or collieries, by reaſon and means whereof the ſaid laſt-mentioned coal pits or collieries were thereby, and by the aforeſaid water being ſo wrongfully and injuriouſly diverted and turned, and continued ſo then and there filled up, choaked up, damaged, injured, and deſtroyed, and the ſaid plaintiffs, during all the time laſt aforeſaid, were prevented and hindered, and ſtill are prevented and hindered from working in the ſaid laſt-mentioned coal pits or collieries, or any or either of them, and from getting any coal from them, or any or either of them, and have thereby loſt and been deprived of divers great gains, profits, and advantages which they otherwiſe would have received and obtained from working the ſaid laſt-mentioned coal pits or collieries, and have otherwiſe been greatly injured, prejudiced, and damnified by reaſon of the premiſes laſt aforeſaid, to wit, at the pariſh of Dithome aforeſaid, in the ſaid county, of the damage of the ſaid plaintiffs of two thouſand pounds, and therefore, &c. Pledges, &c.

Drawn by Mr. I. GRAHAM.

Declaration at suit of sugar bakers for setting casks in a kennel which ran between plaintiff's and defendant's houses, thereby preventing the water from running into the common sewer, in consequence of which it came in at the windows of plaintiff's fill house, and spoiled their sugars.

MIDDLESEX, to wit. John Christian Sulving and John Henry Sulving complain of Frederic Ryder, being, &c., for that whereas the said J. C. and J. H. long before, and at the time of the committing the grievance hereafter next mentioned, were, and from thence hitherto have been, and still are sugar-bakers, and the business of sugar-bakers during all the time aforesaid did use, exercise, and follow, and still doth use, exercise, and follow as partners and joint dealers together in the way of their said business, to wit, at and in the parish of Saint Mary Matfellon, otherwise Whitechapel, in the county of Middlesex aforesaid: And whereas the said J. C. and J. H. during all the time aforesaid were, and still are lawfully possessed of and in a certain building commonly called a sugar-house, with the appurtenances, situate and being in the parish aforesaid, in the county aforesaid, for the carrying on therein of their business of sugar-bakers aforesaid, [illegible] parish, &c. aforesaid. And whereas the said plaintiffs, [illegible] at the time of the committing of the grievance hereafter mentioned, were lawfully possessed of a large quantity, to wit, five thousand pounds weight of sugar, of a large value, to wit, of the value of one hundred pounds of lawful, &c. which before and at the time of committing the grievance hereafter mentioned was in the said building commonly called a sugar-house of the said J. C. and J. H. that is to say, in a certain place, part thereof, called the fill house, the same being under and below the surface of the ground, to wit, [illegible] aforesaid. And whereas before and at the time of the committing of the grievance hereafter next mentioned, to wit, the said J. H. was possessed of a certain other building commonly called a sugar-house, situate opposite and near to the said building called a sugar-house of the said J. C. and J. H. that is to say, [illegible], &c. aforesaid. And whereas during all the time aforesaid there hath been, and still is a certain water course, which during all that time hath been used and accustomed to run and flow, and still doth run and flow from a certain place called Winford Street, in the parish aforesaid, by and near to and along the side of the said building called a sugar-house of the said J. C. and J. H. and between the same and the said building called a sugar-house of the said J. unto and into a certain common sewer in a certain other street called Whitechapel High street, to wit, at the parish aforesaid, in the county aforesaid. And whereas during all that time aforesaid the water of the said water course of right ought to have run and flowed, and still of right ought to run and flow free from any obstruction by any person or persons whomsoever, and by any means whatsoever, to wit, at, &c. aforesaid, yet the said F. well knowing the premises, but contriving, &c. wrongfully and unjustly to injure the said J. C. and J. H. and to cause the said water course to be obstructed, stopped up, and to overflow, and run into the said sugar-house of the said J. C. and J. H. to wit, into that part thereof called the fill house, and thereby to dissolve, wet, injure, damage, and wholly

wholly ſpoil the ſaid ſugar of the ſaid J. C. and J. H. called the fill houſe, he the ſaid F. whilſt the ſaid J. C. and J. H. were ſo poſſeſſed of their ſaid ſugar-houſe and of their ſaid ſugar, and whilſt the ſaid ſugar ſo was on the ſaid part of the ſaid ſugar-houſe of the ſaid J. C. and J. H. called the fill houſe, and whilſt the ſaid F. was ſo poſſeſſed of his ſaid ſugar houſe, and whilſt a large quantity of water was running and flowing down the ſaid water courſe from the ſaid place called Winford Street, in the, &c. to the ſaid common ſewer in the ſaid place called Whitechapel High-ſtreet, to wit, on the twentieth day of Auguſt, A. D. 1770, at the, &c. in the, &c. wrongfully and unjuſtly put and placed, and cauſed, &c. divers veſſels, to wit, eight veſſels commonly called ſugar hogſheads, in, over, and acroſs a part of the ſaid water courſe, to wit, the ſide or part thereof next to the ſaid ſugar-houſe of the ſaid F. and wrongfully and unjuſtly kept and continued, and cauſed to be kept and continued the ſame ſo there put and placed for a long time, to wit, &c. whereby divers large quantities of dirt, ſtraw, manure, rubbiſh, earth, and gravel, and other things, running, ſwimming, and floating in the water, and carried down the ſaid water courſe by the current of the ſaid water, lodged, ſtopped, and reſted againſt, and were obſtructed by the ſaid veſſels, by means whereof the water of the ſaid water courſe could not then and there run or flow into the ſaid common ſewer, but was thereby ſtopped up, dammed up, and obſtructed from running or flowing into the ſame, and did then and there, on occaſion thereof, riſe to a much greater height, to wit, to the height of two feet higher than it otherwiſe would have done, and having ſo riſen then and there by means of the premiſes aforeſaid for want of a free courſe in the uſual courſe thereof, by reaſon of the obſtruction aforeſaid, then and there run and overflowed in great quantities from and out of the ſaid water courſe through certain windows of the ſaid J. C. and J. H. then being in that part of their ſaid ſugar-houſe called the fill houſe unto and into the ſaid fill houſe of the ſaid J. C. and J. H. and over and upon the ſaid ſugar of the ſaid J. C. and J. H. there then being as aforeſaid, and being of the value aforeſaid, and thereby then and there greatly diſſolved, wetted, injured, damaged, and wholly ſpoiled the ſame, to wit, &c. aforeſaid. C. RUNNINGTON.

FOR that whereas the ſaid plaintiff heretofore, to wit, on, &c. was, and from thence hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain meſſuage or dwelling-houſe and yard thereto adjoining, with the appurtenances, ſituate and being at, &c. in which ſaid meſſuage or dwelling-houſe the ſaid plaintiff and his family, during all the time aforeſaid, inhabited and dwelt: And whereas long before and at the time of the committing of the

Declaration for cutting a water pipe which conveyed water to plaintiff's houſe, whereby plaintiff was deprived of water, and put to great trouble and expence in procuring water for his neceſſary uſe.

grievance hereafter next-mentioned, there was a certain wooden pipe, and being under ground near to the ſaid meſſuage of him the ſaid plaintiff, by and through the means of which ſaid pipe, and of a certain leaden pipe, faſtened in and affixed to the ſame, and extending and coming from the aforeſaid wooden pipe unto and into the aforeſaid yard of the ſaid plaintiff, and the ſaid plaintiff and all others of the occupiers and poſſeſſors of the ſaid meſſuage, &c. were during all the time aforeſaid, uſed and accuſtomed to be and were ſupplied, and ſtill ought to be ſupplied with water to be uſed, ſpent, and employed by the occupiers and poſſeſſors of the ſaid meſſuage, &c. with the appurtenances reſpectively; yet the ſaid defendant, well knowing the premiſes aforeſaid, but contriving and maliciouſly intending wrongfully and unjuſtly to hurt, injure, and prejudice the ſaid plaintiff, and to deprive him of water for the neceſſary uſe of the ſaid plaintiff and his family reſiding in the ſaid meſſuage, &c. whilſt the ſaid plaintiff was ſo poſſeſſed of the ſaid meſſuage, &c. to wit, on, &c. at, &c. wrongfully and unjuſtly, injuriouſly and maliciouſly, cut into and through the aforeſaid wooden pipe, and ſeparated and divided the ſame, and cauſed and procured the ſaid wooden pipe to be cut into and through and ſeparated and divided, and wrongfully and injuriouſly kept and continued the ſaid pipe ſo cut into and through, and ſeparated and divided, for a long ſpace of time, to wit, for the ſpace of twelve months then next following; whereby he the ſaid plaintiff was for a long ſpace of time, to wit, for and during all the time aforeſaid, wholly deprived of water to be uſed, ſpent, and employed by him the ſaid plaintiff and his family in the ſaid meſſuage, &c. of him the ſaid plaintiff, and was thereby, during all the time, put to great trouble and inconvenience, and was forced and obliged to, and did lay out and expend divers ſums of money, to wit, in the whole amounting to a large ſum of money, to wit, the ſum of twenty pounds, in and about the furniſhing and ſupplying of water for the neceſſary uſe and purpoſes of him the ſaid plaintiff and his family in his ſaid meſſuage or, &c.; and he the ſaid plaintiff was, hath been, and is, on occaſion of the committing of the grievance aforeſaid, otherwiſe greatly injured and damnified, to wit, at, &c. aforeſaid.

V. LAWES.

Declaration againſt defendant for ſetting down and continuing ſluices and weirs, thereby diverting the ſtream, over flowing plaintiff's lands, ſpoiling the graſs and hedges, and drowning his ſheep.

SOMERSETSHIRE, to wit. John Binden complains of John Stevens, being, &c. in a plea of treſpaſs on the caſe; for that whereas the ſaid J. B. heretofore, to wit, on the firſt of January, in the year 178 , and long before was, and from thence hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain cloſe or piece of land called the Lower Moore, with the appurtenances, ſituate, lying, and being within the pariſh of Bunnington, in the county of Somerſet, and near and in part adjoining to a certain river or water courſe called the River Tone, and running therein in the ſeveral pariſhes of Wellington and Minhead Flores,

in

in the ſaid county of Somerſet; yet the ſaid J. S. well knowing the premiſes, but contriving, &c. to injure and prejudice the ſaid J. B. and to damage, ſpoil, and deſtroy his aforeſaid land, and the graſs and other produce thereof, and to deprive him of the profit of the ſame, heretofore, and whilſt he was ſo thereof poſſeſſed, to wit, on the ſaid firſt day of Jannary, A. D. 178 aforeſaid, at the pariſh of , in the ſaid county of Somerſet, wrongfully and unjuſtly erected and ſet up, put down, let down, laid, and placed, and cauſed and procured to be erected, ſet up, put down, let down, laid, and placed in, over, and acroſs the ſaid river or water courſe, at a certain part thereof near to the ſaid land of the ſaid J. B. certain ſluices, dams, wears, and boards, to wit, ſluices, dams, wears, and boards, and certain large quantities of ſtower, mud, earth, and rubbiſh, to wit, fifty cart loads of ſtower, fifty cart loads of mud, fifty cart loads of earth, and fifty cart loads of rubbiſh, and wrongfully and unjuſtly kept and continued the ſame ſo there reſpectively erected, ſet up, put down, let down, laid, and placed, for a long time, to wit, continually from thenceforth hitherto, and thereby, during all that time injuriouſly obſtructed and diverted the uſual and proper courſe of the water of the ſaid river or water courſe, whereby divers large quantities of the ſaid water, on the day and year aforeſaid, and on divers other days and times between that day and the day of the commencement of this ſuit, ran and flowed out and from the ſaid river or water courſe, and out of the uſual and proper courſe and channel, thereunto and upon the ſaid land of the ſaid J. B. and thereby overflowed the ſame, and thereby rotted, ſpoiled, damaged, waſhed away, and deſtroyed the graſs and herbage of the ſaid J. B. there then growing in and upon the ſaid land, of great value, to wit, of the value of one hundred pounds, and alſo undermined, waſhed away, and deſtroyed the hedges, fences, and ſoil, to wit, two hundred perches of hedges, one hundred perches of fences, and one hundred perches of ſoil of the ſaid J. B. in and of his ſaid land, and the ſaid J. B. during all that time, not only thereby loſt the greateſt part of the uſe, profit, benefit, and advantage of the ſaid land, but by reaſon of the violence of the ſaid floodings and overflowings of the ſaid waters of the ſaid river, or the water courſe in manner and by means aforeſaid, divers cattle, to wit, twenty ſheep and twenty lambs of the ſaid J. B. were forced away, waſhed away, carried away, drowned, and loſt to him the ſaid J. B. and many others were hindered and prevented from feeding and depaſturing in the ſame land, to wit, at the pariſh, &c. aforeſaid, in the, &c. aforeſaid: And whereas the ſaid J. B. heretofore, to wit, on the day of January, A. D. 178 , and long before 2d Count. was, and from thence hitherto hath been, and ſtill is, lawfully poſſeſſed of and in a certain other cloſe or piece of land called the Lower Moore, with the appurtenances, ſituate, lying, and being within the ſaid pariſh of Runnington, in the ſaid county of Somerſet, and near to a certain other river *or water courſe* called the River

River Tone, in the ſaid county of Somerſet, yet the ſaid J. S. well knowing the premiſes laſt aforeſaid, but contriving, &c. to injure and prejudice the ſaid John Binden, and to damage, ſpoil, and deſtroy his ſaid laſt-mentioned land, and the graſs and other produce thereof, and to deprive him of the profits of the ſame land, to wit, on the ſaid firſt day of January, in the year 178 aforeſaid, and from thence for a long ſpace of time, to wit, from thence hitherto, that is to ſay, at the ſaid pariſh of in the ſaid, &c wrongfully and unjuſtly ‖ *kept and continued, and cauſed and procured to be kept and continued there erected, ſet up, put down, laid un, and placed, in, over, and across the ſaid laſt mentioned river or water courſe at a certain part thereof near to the ſaid laſt mentioned land of the ſaid J B certain other ſluices, dams, weirs, and boiras, other ſluices, other dams, other weirs, and other boards, and divers large quantities of ſlower, mud, earth, and rubbiſh, to wit, fifty cart loads of ſlower fifty cart loads of earth, and fifty cart loads of rubbiſh, before then there wrongfully and unjuſtly erected, ſet up, put down, let down, ſet down, laid and placed, and thereby, during all that time, wrongfully and injuriouſly obſtructed and diverted the uſual and proper courſe* of the water of the ſaid laſt-mentioned river *or water courſe*, whereby divers large quantities of the ſaid water, on the day and year laſt aforeſaid, and on divers other days and times between that day and the commencement of this ſuit, ran and overflowed out of and from the ſaid laſt mentioned river or water courſe, and out of his uſual and proper courſe and channel thereunto and upon the ſaid laſt-mentioned land of the ſaid J B. and thereby then and there overflowed the ſame, and thereby rotted, ſpoiled, &c. and deſtroyed the graſs and herbage of the ſaid J. B. there then growing in and upon the ſaid laſt mentioned land, of great value, to wit, of the value of one hundred pounds ‡ *and alſo unfermented, waſhed away, and deſtroyed the hedges, fence, and foſſe, to wit, one hundred perches of the hedges, one hundred perches of the fences, and one hundred perches of the foſſe of the ſaid J B in front of his ſaid laſt-mentioned land*, and the ſaid J B. not only thereby loſt the greateſt part of the uſe, profit, benefit, and advantage of the ſaid laſt-mentioned land, during all the time laſt aforeſaid, leſt by reaſon of the *violence of the ſaid* floodings of the ſaid laſt mentioned river *or water courſe*, in manner and by the means aforeſaid, divers cattle, to wit, twenty ſheep and twenty lambs of the ſaid J B *were forced away, waſted away, carried away*, drowned, and loſt to him the ſaid J B. and many others were hindered and prevented from feeding and depaſturing in the *ſaid laſt-mentioned land*, to wit, at the, &c. aforeſaid, in the, &c. aforeſaid And whereas the ſaid J. B &c &c [as in the ſecond Count, omitting the words "*or water courſe*" as far as this mark ‖, then ſay], wrongfully and unjuſtly erected, ſet up, and let down, and cauſed and procured to be erected, ſet up, and let down, in, over, and acroſs the ſaid laſt-mentioned river, at a certain part thereof near to the ſaid land of the ſaid J B. a certain ſtone ſluice or weir, and wrongfully

Count.

fully and unjuſtly kept and continued the ſame ſo there erected, ſet up, and let down, for a long time, to wit, from thence hitherto, and thereby, during all that time, wrongfully and injuriouſly obſtructed and diverted the uſual and proper courſe, &c. &c. [as in the ſecond Count to this mark ‡], and the ſaid J. B. not only loſt the greateſt part of the uſe, profit, benefit, and advantage of the ſaid laſt-mentioned land during all the time laſt aforeſaid, but by reaſon of the floodings and overflowings of the ſaid waters of the ſaid laſt-mentioned river, in manner and by the means aforeſaid, divers cattle, to wit, twenty ſheep and twenty lambs of the ſaid J. B feeding and depaſturing in the ſaid laſt-mentioned land, were drowned and loſt to him the ſaid J. B and many others were hindered and prevented from feeding and depaſturing in the ſame, to wit, at the pariſh, &c in the county, &c to the damage of the ſaid J B of one hundred pounds, and therefore he brings ſuit, &c.

The inſtructions for this declaration are rather general particularly not ſtating ſpecifically the nature of the obſtruction. It is to be ſuppoſed that the declaration is by ſluice, but that is not to be aſſerted, it ſhould be ſhewn particularly whether by ſluices, drains, or the like, and which of them and how many, and in what parſhes they were ſet up, as the obſtructions is of a local nature.

V LAWES.

MIDDLESEX, to wit. John Bland, late of Shoreditch, in the county of Middleſex, victualler, Thomas Bland, late of the ſame place, dyer Richard Lell, late of, &c aforeſaid, weaver, and Thomas Mſon, late of Spital fields, in the ſaid county of Middleſex, victualler, were attached to anſwer Richard Garret of a plea of treſpaſs upon the caſe, &c, and thereupon the ſaid Richard, by A B. his attorney, complains, that whereas long before and at the time of the committing of the grievance hereafter next mentioned, he the ſaid plaintiff was fully poſſeſſed of and in, and entitled unto a certain meſſuage or dwelling, with the appurtenances, ſituate and being in the pariſh of St. Leonard, Shoreditch, in the ſaid county of Middleſex, for the reſidue of a certain long term of years then to come and unexpired, to wit, a term of twenty-one years, commencing from the feaſt of St John the Baptiſt, A. D. 1770, by indenture bearing date the twenty ſixth day of June, A. D. 1770, and made or mentioned to be made between John March, by the name of, &c of the one part, and George Gillin, by the name of, &c. of the other part, demiſed by the ſaid John March to the ſaid George Gillin, to hold to him, his executors, adminiſtrators, and aſſigns, for the term aforeſaid, which is not yet expired, and which ſaid meſſuage or dwelling-houſe, with the appurtenances, was afterwards and before the committing, &c, hereafter mentioned, to wit, on the ſeventh day of February, in the year 1771, by deed poll indorſed on the ſaid indenture of leaſe, and duly executed by the ſaid G. G. aſſigned by him the ſaid G.G. to him the ſaid plaintiff, to hold to him the ſaid plaintiff and his

Declaration by aſſignee of a term, againſt the tenant, for pulling down wainſcot, &c aſſigned to the freehold, with a converſion.

aſſigns for all the reſidue and remainder of the aforeſaid term then to come and unexpired: And whereas the ſaid J. B. heretofore, and whilſt the ſaid plaintiff was ſo poſſeſſed of and entitled unto the ſaid meſſuage or dwelling-houſe, with the appurtenances, for the term aforeſaid, to wit, on the ſaid, &c. and long before, and from thence for a long time, to wit, until, at, and after the time of the committing, &c. hereafter mentioned, at the ſaid, &c. was the actual occupier of the ſaid meſſuage or dwelling-houſe, with the appurtenances, and during all that time there held the ſame of the ſaid plaintiff as his tenant thereof, at and under a certain yearly rent therefore payable by the ſaid John to the ſaid plaintiff for the ſame, to wit, at, &c.; yet the ſaid defendants, contriving, &c. to hurt and injure the ſaid plaintiff in his eſtate and intereſt of and in his ſaid meſſuage or dwelling-houſe, with the appurtenances, during the time that the ſaid John ſo was the occupier of the ſaid meſſuage or dwelling-houſe, with the appurtenances, as tenant thereof to the ſaid plaintiff, and whilſt he the ſaid plaintiff was ſo poſſeſſed of and entitled to the ſame for the reſidue of the term aforeſaid, to wit, on the twenty-ninth day of September, A. D. 1773, at the ſaid, &c. they the ſaid defendants wrongfully and unjuſtly broke down, &c. a certain partition compoſed of divers materials, to wit, timber wood and wainſcot, being in and parcel of the ſaid meſſuage or dwelling houſe and affixed to the freehold thereof, and alſo broke to pieces, &c. certain pannels, to wit, twenty wainſcot pannels in and belonging to the ſaid meſſuage or dwelling-houſe and affixed to the freehold thereof, and broke to pieces, &c. *one iron grate, one crane, one coal drawer*, forty ſquares of glaſs windows, &c. of, in, and belonging to the ſaid meſſuage or dwelling-houſe and affixed to the freehold thereof, *and took and carried away the materials, to wit, twenty cart loads of timber, ten cart loads of wood of the ſaid plaintiff thereof coming, of a large value, to wit, of the value of twenty pounds, and converted and diſpoſed thereof to his own uſe*; whereby the ſaid plaintiff was and is greatly injured and damnified in his eſtate and intereſt of and in his ſaid meſſuage or dwelling houſe, with the

2d Count. appurtenances, to wit, at the ſaid, &c.: And whereas long before and at the time of the committing, &c. hereafter next-mentioned, he the ſaid plaintiff was, [as in the firſt Count to the gravamen], to wit, on the ſaid, &c. they the ſaid defendants wrongfully and unjuſtly broke down, &c. a certain partition compoſed of divers materials, to wit, timber, &c. being in and parcel of the ſaid meſſuage or dwelling-houſe and affixed to the freehold thereof, and alſo certain pannels, to wit, twenty wainſcot pannels, in and belonging to the ſaid meſſuage or dwelling-houſe and affixed to the freehold thereof, and pulled down, &c. divers, to wit, forty ſquares of glaſs, &c. in and belonging to the windows of the ſaid meſſuage or dwelling-houſe, and alſo the lead work of divers windows, to wit, twenty windows in and belonging to the ſaid houſe, and one wood gutter, &c. being in and belonging to and part and parcel of the ſaid meſſuage or dwelling-houſe and affixed to the freehold thereof; whereby the ſaid plaintiff was and is greatly injured and

damnified

damnified in his eſtate and intereſt of and in his ſaid laſt-mentioned meſſuage or dwelling houſe, with the appurtenances, to wit, at, &c. aforeſaid, wherefore the ſaid plaintiff ſaith he is injured, and hath ſuſtained damage to the value of forty pounds; and therefore he brings ſuit, &c. J. MORGAN.

Common Pleas, Hilary Term, 16. Geo. III.

LONDON, to wit, Joſeph Speckman, late of London, pewterer, was attached to anſwer unto Edmund Turner in a plea of, &c. and thereupon, &c.; for that whereas he the ſaid plaintiff heretofore, to wit, on the firſt day of January, A. D 1775, was, and from thenceforth hitherto hath been, and ſtill is ſeiſed in his demeſne as of fee of and in a certain meſſuage or dwelling houſe, with the appurtenances, ſituate, ſtanding, and being in London aforeſaid, to wit, at the pariſh of St. Catherine Creechurch, in the ward of Aldgate, which ſaid meſſuage or dwelling-houſe, with the appurtenances, is, and during all the time aforeſaid hath been in the tenure and occupation of Moſes Alvarez, as tenant thereof to the ſaid plaintiff: And whereas the ſaid defendant, before and at the time of the committing the grievance hereafter next-mentioned, was, and from thence hitherto hath been, and ſtill is poſſeſſed of and in a certain cloſe or piece of ground, with the appurtenances, ſituate, lying, and being at L. aforeſaid, in the pariſh, &c. aforeſaid, contiguous and next adjoining to the ſaid meſſuage or dwelling-houſe of the ſaid plaintiff. And whereas long before and at the time of the committing of the grievance hereafter mentioned there was a certain door way, then and there being in and belonging to the ſaid meſſuage, &c. of the ſaid plaintiff, and appendant and appurtenant thereto, leading out of the ſaid meſſuage or, &c. of the ſaid plaintiff into the ſaid cloſe or piece of ground, and which door way ought not to have been ſtopped up or obſtructed by any building, erection, or obſtruction, on the outſide thereof erected or ſet up on the ſaid cloſe or piece of ground, and which ſaid door way hath been accuſtomed to be open, and ſtill of right ought to be open'd for a paſſage from the ſaid meſſuage or, &c. of the ſaid plaintiff into the ſaid cloſe or, &c. of the ſaid defendant, to wit, at, &c. aforeſaid, yet the ſaid defendant, well knowing the premiſes, but contriving and maliciouſly intending wrongfully and unjuſtly to injure the ſaid plaintiff in his hereditary eſtate of and in the ſaid meſſuage, &c. with the appurtenances, ſo being in the tenure of the ſaid Moſes Alvarez, † whilſt the ſaid plaintiff was ſo ſeiſed of and in the ſaid meſſuage or, &c. and whilſt the ſaid meſſuage or, &c. was in the tenure of the ſaid M. A. to wit, on the ſaid firſt of 1775, at, &c. aforeſaid, wrongfully, unlawfully, and unjuſtly, and without the leave or licence, and againſt the will of the ſaid plaintiff, built and erected, and cauſed and procured to be built and erected, a certain edifice or building on and upon the ſaid cloſe, &c. of the ſaid defendant, ‖ near a cloſe adjoining unto and againſt the ſaid door way in the ſaid dwelling-houſe of the ſaid plaintiff,

Declaration for a tort. 1ſt Count, for obſtructing a door way from plaintiff's houſe, whilſt in the poſſeſſion of his tenant by the erection.

plaintiff, and hath kept and continued the ſame ſo there built, &c. for a long ſpace of time, to wit, from thence hitherto, and thereby and therewith, during all that time, ſtopped up and obſtructed the ſaid door-way, by means whereof the ſaid door way was, during all the time aforeſaid, and ſtill is rendered wholly uſeleſs, to the great damage and injury of the ſaid plaintiff of and in his hereditary eſtate of and in his ſaid meſſuage or, &c. in the poſſeſſion of the ſaid M. A. as tenant thereof to him the ſaid plaintiff; and the ſaid plaintiff, by means of the premiſes aforeſaid, hath been and is otherwiſe greatly injured and damnified in his eſtate aforeſaid, to wit, at, &c. aforeſaid. And whereas the ſaid plaintiff heretofore, to wit, on, &c. [ſtate plaintiff's being ſeiſed of an *ancient* houſe, &c. as in the firſt Count, and premiſes being in the poſſeſſion of plaintiffs tenants], in which ſaid laſt-mentioned meſſuage or, &c. on the ſouth ſide thereof there now are, and during all the time aforeſaid have been, and ſtill of right ought to be certain *ancient* windows or lights belonging to the ſame, to wit, two *ancient* windows or lights, or, &c. in and through which ſaid windows or, &c. the light and air during all the time aforeſaid, in all the obſtruction thereof hereinafter mentioned, were uſed and accuſtomed to come and enter into the ſaid laſt-mentioned meſſuage or dwelling houſe for the airing and enlightening the ſaid laſt-mentioned meſſuage or, &c. of the ſaid plaintiff, and to the convenient uſe and enjoyment of the ſame by himſelf and his tenants, and the eaſements of which windows, during all the time aforeſaid, until the obſtruction thereof hereafter mentioned, were uſed and accuſtomed to open, and ſtill of right ought to open outwards from the ſaid meſſuage or, &c. over the ſaid cloſe or ſcite of ground without any hinderance, ſtoppage, or obſtruction whatſoever, to wit, at, &c. And whereas, &c. [ſtate defendant to be poſſeſſed of the cloſe as in the firſt Count, with this addition at the end, "being the cloſe or piece of ground before-mentioned"], yet, &c. [as in the firſt Count to this mark], then go on as follows], and to obſtruct, hinder, and prevent the light and air from coming and entering through the ſaid windows or lights into the ſaid laſt mentioned meſſuage or, &c. of the ſaid plaintiff, and to ſtop and obſtruct the ſaid caſements of the ſaid windows from opening freely and to the full extent they were uſed and accuſtomed to open, and full of right ought to open, whilſt the ſaid plaintiff was ſo ſeiſed of and in his ſaid laſt-mentioned meſſuage or, &c. with the appurtenances, and whilſt the ſaid meſſuage or, &c. was in the tenure and occupation of the ſaid M. A. as tenant thereof to the ſaid plaintiff, to wit, on the firſt day of May, A. D. 1775, at, &c. aforeſaid, wrongfully, &c. and without the leave, &c. and againſt, &c. built, &c. and cauſed, &c. to be built, &c. in and upon the ſaid cloſe or, &c. a certain edifice or, &c. near to the ſaid windows of, &c. and againſt the ſaid meſſuage or, &c. of him the ſaid plaintiff, and kept, &c. ſaid edifice, or, &c. there ſo built, and for a long ſpace of time, to wit, from, &c. and thereby, during all that time, obſtructed and prevented the

1st Count, for obſtructing windows and eaſements.

Vide Salk. 459.

the light and air from coming and entering through the ſaid windows or, &c. unto the ſaid laſt-mentioned meſſuage or, &c. in ſo free and ample a manner as the ſame was uſed and accuſtomed to do, and ſtill of right ought to do, and thereby alſo prevented the ſaid caſements of the windows aforeſaid from opening as the ſame, during all that time, ought to have done, and would otherwiſe have done, and ſtill of right ought to do, and by reaſon thereof the ſaid laſt-mentioned meſſuage or, &c. of the ſaid plaintiff was, during all that time, greatly and wrongfully darkened, to the great damage, &c. [as in the firſt Count]: And whereas, &c. [ſtate the plaintiff to be poſſeſſed of a houſe and it being in the poſſeſſion of M. A. as in the firſt Count, then proceed as follows]: And whereas long before and at the time of, &c. there was and ſtill is a certain drain or water-courſe belonging and appertaining to the ſaid laſt-mentioned meſſuage or, &c. of the ſaid plaintiff, for the purpoſe of carrying off and conveying from the ſaid laſt-mentioned meſſuage or, &c. of the ſaid plaintiff the rain and other water from time to time falling on and being in the ſaid meſſuage or, &c. into and through a certain cloſe or piece of ground hereafter mentioned, into a certain ſtreet or king's common highway there called Jewry-ſtreet, to wit, at, &c. aforeſaid: And whereas before and at, &c. [ſtate defendant to be poſſeſſed of a cloſe, &c. as in ſecond Count]; yet, &c. [as in the firſt Count to this mark ‖, then proceed as follows]; upon and over the ſaid drain or, &c. and kept and continued the ſame ſo then built, &c. for a long ſpace of time, to wit, from, &c. ‡ and thereby and therewith, during all that time, hindered, prevented, and obſtructed the ſaid plaintiff and his tenants from cleanſing, ſcouring, and amending the ſame, which then and there became choaked up, ſtopped up, and obſtructed, and continued ſo choaked up, &c. for a long ſpace of time, to wit, for and during all the time aforeſaid; by means whereof the rain and other water falling on and being, and coming from the ſaid laſt-mentioned meſſuage or, &c. unto the ſaid drain or, &c. afterwards, to wit, on the firſt of Auguſt, in the year aforeſaid, and on divers other days and times between that day and the day of ſuing forth the original writ of the ſaid plaintiff againſt the ſaid defendant, for want of a free paſſage through the ſaid drain or, &c. ran back out of the ſaid drain, or, &c. and then and there ran and ſunk into the ſaid laſt-mentioned meſſuage or, &c. of the ſaid plaintiff ſo in the poſſeſſion of the ſaid M. A. as tenant thereof to the ſaid plaintiff as aforeſaid, and greatly wetted the ſame, and by means thereof the foundation of the ſaid laſt-mentioned meſſuage or, &c. was and is greatly wetted, rotted, mouldered away, and damaged, to the great damage, &c. [as in the firſt Count]: And whereas, [every thing as in the third Count till you come to this mark ‡, then proceed as follows]; and by means of the ſaid erection or building the ſaid plaintiff and his tenant aforeſaid now are, and the ſaid plaintiff and his tenants hereafter, for the time being, during all ſuch time as the ſaid edifice or building ſhall continue, will be prevented from cleanſing, ſcouring, and amending the ſaid drain or, &c. whenever occaſion

3d Count, building over a water-courſe, whereby plaintiff and his tenant are hindered from cleanſing, &c. and the premiſes became overflowed.

hath

hath required or may require, to the great damage [as before]; wherefore, &c.; damages, &c.; ſuit, &c. J. MORGAN.

B. R. Michaelmas Term, 19. Geo. III.

Declaration for erecting a tumbling bay above the uſual height, and thereby impeding the working of the plaintiff's mills.

SURRY, to wit. James Henchel, the younger, complains of —— Shipley, being in the cuſtody, &c.; for that whereas the ſaid plaintiff heretofore, to wit, on the firſt day of September, A. D. 1777, was, and from thence hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain ſet of ancient water-mills, to wit, two water-mills, commonly called and known by the name of Atkyn's Mills, ſituate over and upon a certain ancient river called the river Wandle, to wit, at the pariſh of , in the ſaid county of Surry: And whereas during all the time aforeſaid the water of the ſaid river Wandle of right ought to have run and flowed, and ſtill of right ought to run and flow from the ſaid mills of the ſaid plaintiff through divers lands in the pariſh aforeſaid unto and into the river Thames, to wit, at the pariſh aforeſaid: And whereas the ſaid plaintiff, by reaſon of his ſaid poſſeſſion of the ſaid mills during all the time aforeſaid, of right out to have had, and ſtill of right ought to have the free current, courſe, uſe, and benefit of the ſaid water running and flowing down the ſaid water courſe unto his ſaid mills, and the free courſe and currency of the ſaid water through and from his ſaid mills down to the ſaid river Thames for the working of his ſaid mills, to wit, at the pariſh aforeſaid: And whereas the ſaid defendant before and during all the time aforeſaid was, and ſtill is poſſeſſed of and in a certain other mill, ſituate over and upon the ſaid river Wandle, that is to ſay, below the ſaid mills of the ſaid plaintiff, to wit, at the pariſh aforeſaid: And whereas the water of the aforeſaid Wandle from time to time, during all the time aforeſaid, running and flowing from the ſaid mills of the ſaid plaintiff in and along the ancient channel thereof towards the river Thames aforeſaid, when and ſo often as the ſame hath arrived at the ſaid mill, and hath riſen and been at a certain height, to wit, the height of feet and inches from the bed of the ſaid river Wandle, hath, until the obſtruction and ſtoppage thereof hereafter mentioned, been uſed and accuſtomed to run and flow, and for and during all the time aforeſaid of right ought to run and flow from and out of the river Wandle over a tumbling bay above and belonging to the ſaid mill of the ſaid defendant, but below the ſaid mills of the ſaid defendant, at the pariſh aforeſaid, into a certain back channel or water courſe there leading from the ſaid tumbling bay into the ſaid river Wandle below the ſaid mill of the ſaid defendant, and from thence into the ſaid river Thames, ſo that the water of the ſaid river Wandle might not be penned back upon the mills and hinder and obſtruct the work thereof, to wit, at the pariſh aforeſaid, yet the ſaid defendant, well knowing the premiſes, but contriving and wrongfully and injuriouſly intending to injure the ſaid plaintiff, and to deprive him of the benefit and advantage of working his ſaid mills, and of the profit

profit that might otherwiſe ariſe and accrue therefrom, heretofore, to wit, on the firſt day of September, A. D. 1777, and from thence hitherto hath wrongfully and injuriouſly kept and continued, and cauſed to be kept and continued wrongfully and unjuſtly raiſed and erected much higher, to wit, ten inches higher than the ſame ought to have been erected; whereby the water, on the day and year aforeſaid and on divers other days and times between that day and the day of exhibiting this bill, running and flowing from the ſaid mills of the ſaid plaintiff, in and along the ancient channel of the river W. unto the aforeſaid mill of the ſaid defendant after ariſing, arriving, and being at the aforeſaid height, to wit, &c. the height of feet and inches, at the head of the ſaid mill of the ſaid defendant, aroſe to a much greater height, to wit, ten inches higher than it ought to have ariſen on thoſe ſeveral days and times, by means of the ſaid tumbling bay of the ſaid defendant ſo being higher from the bed of the ſaid river W. the ſame being ten inches higher than it ought to have been, and continued ſo higher than it ought to have been for a long time, to wit, for the ſpace of ten hours on and at thoſe ſeveral days and times, and was by the means aforeſaid obſtructed, ſtopped, hindered, and prevented from running and flowing over the tumbling bay before the ſaid mill of the ſaid defendant, and thereby became and was penned back upon the wheels of the mills of the ſaid plaintiff, whereby the ſaid mills, for and during the reſpective times aforeſaid, were hindered and prevented from working; and the ſaid plaintiff thereby loſt and was deprived of the profit, benefit, and advantage that would otherwiſe have ariſen and accrued unto him from the working of the ſaid mills, to wit, at the pariſh aforeſaid. J. MORGAN.

Declaration againſt defendant, for diverting an ancient water courſe which ſupplied plaintiff's mill.

YORKSHIRE, to wit. H. K. complains of J. L. being, &c.; for that whereas the ſaid plaintiff, on, &c. and before was, and from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of and in divers, to wit, three ancient water mills, with the appurtenances, ſituate and being in the townſhip of T. in the county of the city of York, in, upon, and near to a certain river there called the river W. and by reaſon of his poſſeſſion of the ſaid reſpective mills, with the appurtenances, the ſaid H. during all the time aforeſaid, of right ought to have had, and ſtill of right ought to have the uſe, benefit, and advantage of the water of the ſaid river for the working of his ſaid reſpective mills; yet the ſaid J. well knowing the premiſes, but contriving and maliciouſly intending wrongfully to injure and prejudice the ſaid H. in this behalf, and to deprive him of the uſe, benefit, and advantage of his ſaid mills, with the appurtenances, whilſt the ſaid H. was ſo poſſeſſed as aforeſaid, to wit, on the ſaid firſt day of December 1784, and on divers other days and times between that day and the day of exhibiting this bill, wrongfully and injuriouſly cut, dug, made, and opened, and cauſed to be cut, dug, made, and opened a certain cut, channel, or water courſe, of great depth, width, and length, to wit, of the width of ſixty feet, of the depth of ten feet,

and of the length of two hundred feet, in a certain close of the said J called D. Close, situate in the township of C in the said county of York, the said cut, channel, or water course, extending to and opening into the course and channel of the said river in a certain part thereof in the township of C above the said mills of the said H with the appurtenances, and kept and continued the said cut, channel, or water course, so cut dug, made, and opened there, and so extending to and opening into the course and channel of the said river as aforesaid, for a long space of time, to wit, continually from thenceforth hitherto, and thereby, during all that time turned and diverted a great part of the water of the said river called the river W. from the ancient and usual course and channel of the said river into the said cut, channel, or water course so cut, dug, made, and opened by the said J. as aforesaid, and thereby, during all that time, prevented and hindered the water of the said river from running and flowing in its ancient course unto the said mills of the said H and from supplying the same with water for the working of the same mills in so ample and beneficial a manner as during all that time it otherwise would and ought to have done; by reason whereof the said H during all that time, could not have water sufficient for the working of his said mills in so ample and beneficial a manner as he otherwise would and ought to have done, but during all that time lost the greatest part of the use, profit, and advantage of his said mills, to wit, at, &c. And whereas also the said H on the first day of December 1784, and long before was, and still is possessed of a certain ancient wear or mill dam, with the appurtenances, part thereof situate and being in the said township of T. and the residue in the said township of C. in and across a certain other river there called the river W. and by reason thereof, during all the time aforesaid, of right ought to have had, and still of right ought to have, a way for himself and his servants, from the king's common highway leading between the village of T. in the said county of Y. into, through, and over a certain close of the said J called D Close, in the said county of Y. unto the said wear or mill dam of the said H. and so from thence back again to the said king's common highway, to go, return, pass, and repass, on foot and with horses, carts, and carriages, at his and their free will and pleasure, when and as often as occasion hath required, for the purpose of repairing and amending the said wear or mill dam, yet the said J well knowing the last mentioned premises, but contriving and maliciously intending to injure and prejudice the said H in this behalf, and to deprive him of the use, benefit, and advantage of his said wear or mill dam, and of his said way to the same, whilst he the said H. was so possessed of the said last-mentioned wear or mill dam, with the appurtenances, as aforesaid, to wit, on the said first of December 1784, and on divers other days and times between that day and the day of exhibiting this bill, wrongfully and injuriously cut, dug, and made, and caused to be cut, dug, and made, a certain other cut or channel of great width, depth, and length, to wit, of the

2nd Count, for obstructing a way which plaintiff had over a close of defendant's to plaintiff's mill dam for the purpose of repairing the same by cutting a channel across the way.

the width of ſixty feet, of the depth of ten feet, and of the length of two hundred feet, in the ſaid laſt-mentioned cloſe, in and acroſs the ſaid way there, and continued and kept them ſo dug, cut, and made there for a long ſpace of time, to wit, continually from thenceforth hitherto, whereby the ſaid way there was, during all that time, ſtopped up and obſtructed, and the ſaid H and his ſervants could not, during all or any part of that time paſs or repaſs on foot, and with horſes, carts, and carriages, from the ſaid common king's highway to and over the ſaid cloſe of the ſaid J. there called D. Cloſe, into the ſaid wear or mill dam of the ſaid H. and from thence back again to the ſaid common king's highway, in and along the ſaid way of the ſaid H. there, for the purpoſe of repairing and amending the ſaid wear or mill dam when occaſion required, as they ought to have done, and the ſaid H during all that time, loſt and was deprived of the uſe, benefit, and advantage of his ſaid way there, and was prevented and hindered from repairing or amending his ſaid wear or mill dam, to wit, at the township of C. aforeſaid, in the ſaid county: And whereas alſo the ſaid H. on the firſt of December 1784 aforeſaid, and long before was, and continually from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain ancient ſalmon heck, with the appurtenances, ſituate and being in a certain part of the ſaid river called the river W. in the township of T in the ſaid county of the city of Y. foreſaid, for the taking and catching of ſalmon there, and during all that time was lawfully entitled to the ſole right and privilege of fiſhing for, taking, and catching ſalmon there in the ſaid ſalmon heck: And whereas during all the time laſt aforeſaid the water of the ſaid river W. of right ought to have run and flowed, and ſtill of right ought to run and flow in its ancient and accuſtomed courſe to the ſaid ſalmon heck of the ſaid H. for the better ſupplying of the ſaid ſalmon heck, and the ſaid fiſhery of the ſaid H with the ſalmon of the ſaid river without any diverſion of the courſe of the water of the ſame river to prevent the ſame ſalmon from coming to the ſaid ſalmon heck, and from being there taken and caught by the ſaid H.; nevertheleſs the ſaid J well knowing the premiſes laſt aforeſaid, but contriving and maliciouſly intending to injure and prejudice the ſaid H. in this behalf, and to deprive him of the uſe, benefit, and advantage of his ſaid ſalmon heck and fiſhery, whilſt the ſaid H. was ſo poſſeſſed thereof and entitled as aforeſaid, to wit, on, &c. wrongfully and injuriouſly, newly cut, dug, made, and opened, and cauſed to be newly cut, dug, made, and opened a certain other large cut or channel of great width, depth, and length, to wit, of the width of ſixty feet, of the depth of ten feet, and of the length of two hundred feet, in a certain other cloſe or parcel of land of the ſaid J. called, &c. and adjoining to the ſaid river there, the ſaid laſt-mentioned cut or channel extending to and opening into the ancient channel or courſe of the ſaid river there above the ſaid ſalmon heck of the ſaid H. and kept and continued the ſaid laſt-mentioned cut or channel ſo cut, dug, made, and opened as aforeſaid,

3d Count, for diverting the ancient courſe of the river which ſupplied the plaintiff's ſalmon heck, by digging a channel, *per quod*, &c.

ſaid, and ſo extending to and opening into the ancient courſe or channel of the ſaid river W as aforeſaid, for a long ſpace of time, to wit, from thenceforth continually hitherto, and during all that time, turned and diverted a great part of the water of the ſaid river called the W. from the ancient, proper, and uſual courſe and channel of the ſaid river above the ſaid ſalmon heck, into the ſaid laſt-mentioned cut or channel, whereby the water of the ſaid river, during all that time, was prevented from running and flowing to the ſaid ſalmon heck in ſo copious and beneficial a manner as it otherwiſe might and would have done, and as well for want of a ſufficient current and ſtream of water running down to the ſaid ſalmon heck into the ancient and uſual courſe of the ſaid river as aforeſaid, as alſo by means of large quantities of the ſalmon of the ſaid river W. going into and remaining in the ſaid laſt mentioned cut or channel, and being there taken and deſtroyed, the number of the ſalmon of the ſaid river coming to the ſaid ſalmon heck of the ſaid H. hath been and is greatly diminiſhed, and the ſaid H hath been prevented from taking and catching ſo many ſalmon in his ſaid ſalmon heck as during that time he otherwiſe would and might have done, and during all the time laſt aforeſaid could not, nor yet can have uſed and enjoyed his ancient ſalmon heck and fiſhery in ſo ample and beneficial a manner as he ought to have done, but during all that time loſt and was deprived of great part of the uſe, benefit, and advantage thereof, and the ſaid ſalmon heck and fiſhery are rendered of little or no uſe or value to the ſaid H to wit, at, &c.

4th Count, for diverting the ancient course of the river in which plaintiff had a right of free fiſhery by cutting a channel directly diverting the course of the river, per quod many of the fiſh were deſtroyed

And whereas alſo the ſaid H on, &c and long before was, and continually from thence forth hitherto hath been, and ſtill is lawfully poſſeſſed of and in a free and deſirable fiſhery in the aforeſaid river called the river W to wit, in a certain part of the ſaid river ſituate in the township of I in the ſaid county of the ſaid city of Y And whereas the ſaid H during all the time laſt aforeſaid of right ought to have had and enjoyed, and ſtill of right ought to have and enjoy the free and uninterrupted uſe, benefit, profit, and advantage of the ſaid laſt mentioned fiſhery, without any diſturbance, moleſtation, or interruption whatſoever, nevertheleſs the ſaid J well knowing the laſt mentioned premiſes, but contriving and maliciouſly intending to injure and prejudice the ſaid H in this behalf, and to deprive him of the uſe, benefit profit, and advantage of the ſaid laſt mentioned fiſhery as aforeſaid, to wit, on, &c wrongfully and injuriouſly cut, &c and cauſed to be cut, &c of a great width, &c in a certain other cloſe or parcel of land of the ſaid J. called &c ſituate in, &c adjoining to the ſaid river there, the ſaid laſt-mentioned cut or channel extending to and opening into the courſe or channel of the ſaid river W. there, near to the ſaid fiſhery of the ſaid H laſt-mentioned, and kept and continued the ſaid cut or channel ſo cut, &c there for a long ſpace of time, to wit, continually from thenceforth hitherto, and thereby, during all that time, turned and diverted a great part of the water of the ſame river from its ancient and uſual courſe and channel, and from the ſaid laſt mentioned fiſhery of the ſaid H.

into

into the ſaid cut or channel ſo cut, dug, and made as laſt aforeſaid, whereby as well for want of a ſufficient ſupply of water in the ſaid laſt-mentioned fiſhery, as alſo by means of great numbers of the fiſh in the ſaid river W. going into and remaining in the ſaid laſt-mentioned cut or channel, and being then taken and deſtroyed, the number of the fiſh of the ſaid river, coming into the ſaid laſt-mentioned fiſhery of the ſaid H. hath been and is greatly diminiſhed, and the ſaid H. hath been prevented and hindered from taking and catching ſo many fiſh in his ſaid laſt-mentioned fiſhery as during that time he otherwiſe might and would have done; and the ſaid H. by reaſon of the ſaid laſt-mentioned premiſes, during all the time laſt aforeſaid, could not, nor can yet have, uſe, and enjoy his ſaid laſt-mentioned fiſhery, in ſo ample and beneficial a manner as he ought to have done, and ſtill ought to do, but during all the time aforeſaid loſt and was deprived of great part of the uſe, benefit, and advantage of his ſaid fiſhery, and the ſaid fiſhery is thereby greatly diminiſhed and leſſened in value, and rendered of little or no uſe to the ſaid H. to wit, at, &c. Damages.

A. CHAMBRE.

YORKSHIRE, to wit. William Brown complains of R. G. being, &c.; for that whereas the ſaid R. on the day of 1788, at Rippon, in the ſaid county, was poſſeſſed of and kept divers, to wit, two tups or rams, the ſame being then and there very vicious, fierce, unruly, and very improper to go at large and to wander about; yet the ſaid R. well knowing the ſaid tups and rams to be ſo vicious, fierce, unruly, and improper to go at large and wander about, afterwards, to wit, on the ſame day and year aforeſaid, at, &c. negligently, remiſsly, and careleſsly permitted and ſuffered the ſaid tups or rams to go at large and wander about from place to place, which ſaid tups or rams of the ſaid R. afterwards, to wit, on the ſame day and year aforeſaid, at, &c. ſo being at large and ſuffered to wander about by the neglect and default of the ſaid R. broke and entered a certain cloſe of the ſaid W. lying and being in the ſaid pariſh of Rippon, in the ſaid *county*, *the ſaid cloſe being then and there ſufficiently fenced and incloſed*, and then and there attacked, fought with, bruiſed, and wounded a certain tup or ram of the ſaid W. of great value, to wit, of the value of twenty pounds, then being in the ſaid cloſe of the ſaid W. in a very grievous manner, inſomuch that the ſaid tup or ram of the ſaid W. afterwards, to wit, on the ſame day and year aforeſaid, at, &c. died. [2d Count like the firſt, omitting what is in Italic. 3d Count, ſtating the defendant to have only one ram inſtead of two]; to the damage of the ſaid W. of fifty pounds, and therefore he brings ſuit, &c.

Drawn by MR. J. GRAHAM.

* Declaration againſt defendant (who kept two rams which he knew to be vicious), for ſuffering them to wander about, and which ſaid rams broke into plaintiff's cloſe, and fought with and killed a ram of the plaintiff's.

* This Precedent is here miſplaced. See TORTS to Perſonal Property, INDEX.

Landlord of a copyhold eſtate againſt his tenant for very extenſive waſte.

SURRY, to wit. Luke Lightfoot complains of Fayrer Gibbon being, &c. in a plea of treſpaſs on the caſe, for that whereas long before and at the time of the committing of the grievance hereinafter next mentioned, he ſaid plaintiff was ſeiſed in his demeſne as of fee at the will of the lord of the manor of Norwood, in the county of Surry, according to the cuſtom of the ſaid manor of and in a certain meſſuage or dwelling houſe, and divers, to wit, fifteen acres of land, with the appurtenances, ſituate, lying and being in the pariſh of St Mary Lambeth, in the county of Surry, within and parcel of the manor aforeſaid. And whereas ſaid defendant on the day of A. D. at the pariſh aforeſaid, in the county aforeſaid, was the poſſeſſor and occupier of ſaid meſſuage, lands and premiſes with the appurtenances, and during all that time held the ſame of the ſaid plaintiff as his tenant thereof, to wit, *from year to year at the will of ſaid plaintiff and defendant at a certain yearly rent, to wit, the yearly rent of pounds*, payable by ſaid defendant to ſaid plaintiff for the ſame, [and the ſaid defendant being ſo poſſeſſed thereof, he the ſaid defendant afterwards, to wit, on the day of A. D. at, &c. aforeſaid, ſurrendered and yielded up the poſſeſſion of ſaid meſſuage, lands, and premiſes, to ſaid plaintiff,] yet ſaid defendant contriving and fraudulently and maliciouſly intending to hurt and injure ſaid plaintiff in his eſtate of inheritance of and in the ſaid meſſuage or dwelling houſe, outhouſe, ſtables, coach houſes, brew houſe, and land with the appurtenances during the time that he ſaid defendant was poſſeſſed of ſaid ſeveral premiſes with the appurtenances, [and ſome time before he ſaid defendant left and yielded up the poſſeſſion of ſaid premiſes with the appurtenances,] and whilſt he ſaid plaintiff was ſo ſeiſed thereof, as aforeſaid, to wit, on the day of A. D. at, &c. aforeſaid wrongfully and unjuſtly broke down, pulled down, proſtrated, broke to pieces, ſpoiled, and deſtroyed, divers chimney pieces, to wit, ten marble chimney pieces, ten other ſtone chimney pieces, and ten wood chimney pieces, twenty facings to fire places of marble, twenty facings to fire places of other ſtone, and divers, to wit, ten marble ſlabs, ten marble hearths, ten ſtone ſlabs, and ten ſtone hearths, affixed to and parcel of the freehold of ſaid meſſuage or dwelling houſe, and broke to pieces, proſtrated, ſpoiled, and deſtroyed five hundred yards of baluſtrade and five hundred yards of railing or banniſters of and belonging to and affixed to, and being parcel of the freehold of ſaid meſſuage, &c. and broke down, cut down, broke to pieces, ſpoiled, and deſtroyed divers doors and door caſes, ten mahogany doors, ten mahogany door caſes, ten wainſcot doors, &c. &c. &c. deal, &c. fir, &c. affixed to and being parcel of the freehold of ſaid meſſuage or, &c. and broke to pieces, cut to pieces, ſpoiled, and deſtroyed the windows and window frames, wainſcoting, and cornices, to wit, forty windows, forty window frames, five hundred ſquare yards of wainſcoting, and five hundred rods of cornices of and belonging to ſaid meſſuage or,

2d Count, as tenant at will thereof to him ſaid plaintiff, and under a certain rent.

&c. and broke down, proſtrated, pulled down, ſpoiled, and deſtroyed the brick work of and belonging to ſaid meſſuage or dwelling houſe, to wit, five thouſand rods thereof, and broke down, ſpoiled, and deſtroyed all and ſingular the ceilings of and belonging unto ſaid meſſuage or, &c. and broke down, cut, ſpoiled, and deſtroyed the timbers, beams, rafters, joiſts, and floors of ſaid meſſuage or, &c. and thereby greatly weakened, disjointed, [illegible]d, damaged, and ſpoiled ſaid meſſuage or, &c and dug up the hedges, quickſets, and fences of and belonging to the lands aforeſaid, and lately growing therein or parcel of ſaid premiſes, and broke down, pulled down, proſtrated, and deſtroyed the wood fences, gates, and ſtiles of and belonging to ſaid lands in the ſole and freehold thereof, whereby the ſaid plaintiff was and is greatly injured and damnified of and in his eſtate of inheritance of and in his ſaid meſſuage or dwelling houſe and land, with the appurtenances, to wit, at, &c. aforeſaid. [Second Count, ſtating defendant to be tenant at will. Third and fourth ſame as firſt and ſecond, omitting what is contained in the crotchets.

J. MORGAN.

Landlord who has a life eſtate in the premiſes againſt tenant for years, for pulling down outhouſes, walls, gates, &c.

SURRY, to wit. John Armitage complains of John Allen being, &c. in a plea of treſpaſs on the caſe, for that whereas long before, and at the time of the committing of the grievance hereafter mentioned, the ſaid plaintiff was ſeiſed in his demeſne as of freehold, that is to ſay, for the term of his natural life of and in divers, to wit, three meſſuages or dwelling houſes and divers out houſes and other erections and buildings, to wit, one brew houſe, one mill houſe, two ſtarch houſes, one ſtarch ſtove, one outhouſe or building, called a leantoo, one ſtable, one cart ſhed, one loft, two grain pits, three hog ſtyes, one garden, and divers, to wit, four acres of land, with the appurtenances, ſituate, lying, and being at St. Mary Lambeth, in the ſaid county of Surry, and whereas he ſaid defendant on the twenty ſixth of June 1773, and before and from thence hitherto hath been, and ſtill is the poſſeſſor and occupier of the ſaid meſſuage, lands, and premiſes with the appurtenances and during all that time held the ſame of the ſaid plaintiff, that is to ſay, as his tenant thereof, for a certain term of years which is yet to come and unexpired at and under a certain yearly rent, to wit, the yearly rent of ſixty pounds, payable yearly by the ſaid defendant to the ſaid plaintiff for the ſame, to wit, at the pariſh aforeſaid, yet ſaid defendant contriving and fraudulently and injuriouſly intending to hurt and injure ſaid plaintiff in his eſtate of inheritance of and in the ſaid meſſuages, outhouſes, erections, buildings, and other the premiſes with the appurtenances, during the time that he ſaid defendant held the ſame of ſaid plaintiff as his tenant thereof as aforeſaid, and whilſt ſaid plaintiff was ſo ſeiſed thereof as before mentioned, to wit, on the firſt day of May, A. D 1774, at the pariſh aforeſaid,

wrongfully and unjuſtly, and without the leave or licence, and againſt the will of the ſaid plaintiff, broke down, pulled down, proſtrated, ſpoiled, and deſtroyed the rafters, beams, joiſts, roofs, ceilings, walls, wainſcots, floors, windows, window frames, doors and door caſes of and belonging to the ſaid ſeveral meſſuages or dwelling houſes, and wrongfully, unjuſtly, and without the leave or licence and againſt the will of ſaid plaintiff pulled down, proſtrated, and deſtroyed the ſaid outhouſes, erections, and buildings, to wit, ſaid brew houſe, mill houſe, two ſtarch houſes, ſaid ſtarch ſtove, ſaid outhouſe or building called a leantoo, ſaid ſtable, ſaid cart ſhed, ſaid loft, ſaid two grain pits, ſaid three hog ſtyes, and divers, to wit, fifty perches of a certain wall, to wit, a wall belonging to the ſaid garden, part and parcel of the ſaid premiſes, and took and carried away the materials, to wit, forty cart loads of brick, forty cart loads of pantiles, ſtones, mortar, timber, planks, and boards of ſaid plaintiff thereof coming, of a large value, to wit, of the value of two thouſand pounds, and converted and diſpoſed thereof to his own uſe, and then and there dug up and deſtroyed the pavements of and belonging to the ſaid brew houſe, mill houſe, ſtarch houſes, ſtarch ſtove, outhouſe or building called a leantoo, ſtable, cart ſhed, grain pits, and hog ſtyes, and took and carried away the materials, to wit, ten cart loads of other bricks, pantiles, and ſtones of ſaid plaintiff thereof coming, of a large value, to wit, of the value of one hundred pounds, and converted and diſpoſed thereof to his own uſe, and then and there wrongfully and unjuſtly, and without the leave and licence, and againſt the will of ſaid plaintiff broke down, pulled down, dug up, proſtrated, ſpoiled, and deſtroyed the gates and gate poſts then erected, ſtanding, and being on and parcel of the ſaid premiſes, to wit, twenty gates and forty gate poſts and the materials, to wit, two cart loads of timber, and two cart loads of wood, and divers hooks, locks, ſtaples, and hinges, with which the ſaid gates were faſtened of ſaid plaintiff of a large value, to wit, or the value of other forty pounds thereof coming, took and carried away, and converted and diſpoſed thereof to his own uſe, to wit, at the pariſh aforeſaid, whereby ſaid plaintiff was and is greatly hurt, injured, and damnified in his eſtate of inheritance of and in his aforeſaid premiſes with the appurtenances, to wit, at, &c. aforeſaid. [Add another Count leaving out the converſion.]

I. MORGAN.

Landlord having let eſtate for life, according to the cuſtom of the manor in the county, againſt his tenant for ſtripping and waſte of meadow

ESSEX, to wit. Sir John Silveſter, knight, complains of Joſeph Sureties being in the cuſtody, &c. in a plea of treſpaſs on the caſe; for that whereas long before and at the time of committing of the grievances hereafter mentioned, he the ſaid plaintiff was ſeiſed in his demeſne as of freehold, that is to ſay, for the term of his natural life at the will of the lord of the manor of Sewardſton, in the ſaid county of Eſſex, according to the cuſtom of the ſaid manor of and in a certain meſſuage or dwelling,

and divers, to wit, one hundred acres of land, with the appurtenances, ſituate, lying, and being in the pariſh of Waltham-Holy-croſs, in the ſaid county of Eſſex, and within and parcel of the ſaid manor; and whereas he ſaid defendant afterwards, to wit, on the day of A. D. and before and from thence for a long time, to wit, until the day of exhibiting the bill of the ſaid plaintiff, to wit, at the pariſh aforeſaid in the county aforeſaid, was the poſſeſſor and occupier of the ſaid meſſuage, lands, and premiſes with the appurtenances; and during all that time there held the ſame of ſaid plaintiff, that is to ſay, as his tenant thereof, to wit, from year to year at the will of the ſaid plaintiff and defendant, at and under a certain yearly rent, to wit, the yearly rent of one hundred pounds payable by ſaid defendant to the ſaid plaintiff for the ſame; yet ſaid defendant contriving, and fraudulently, wrongfully, and injuriouſly intending to hurt and injure ſaid plaintiff in his eſtate of inheritance of and in the ſaid meſſuage and lands, with the appurtenances, during the time that he the ſaid defendant held the ſame of ſaid plaintiff as his tenant thereof as aforeſaid, and whilſt the ſaid plaintiff was ſo ſeiſed thereof as before mentioned, to wit, on the day of A. D. at, &c. aforeſaid, wrongfully and unjuſtly, and without the leave and licence and againſt the will of ſaid plaintiff with ploughs and other iron inſtruments, ploughed up, broke up, and ſubverted the land, to wit, one cloſe or piece of land called, &c. containing divers, to wit, eight acres, the ſame being ancient meadow land, and one other cloſe or, &c. called, &c. containing, &c. containing, &c. the ſame being ancient meadow land, and the ſaid two cloſes or pieces of land being part and parcel of the ſaid premiſes, whereby ſaid plaintiff was and is greatly injured and damnified of and in his eſtate of inheritance, and of and in his ſaid land, to wit, at, &c. aforeſaid. [Second Count ſame as the firſt, only ſtating defendant to be a tenant for a certain term of years, not yet expired. Third Count, tenant at the will of plaintiff and defendant. Three more Counts for divers, to wit, twenty acres of ancient meadow land] I. MORGAN.

BUCKINGHAMSHIRE, to wit. Thomas Ford complains of Francis Chittle, being in the cuſtody of, &c. in a plea of treſpaſs on the caſe; for that whereas the ſaid plaintiff, before and at the time of the committing of the grievance hereafter next mentioned was, and from thence hitherto hath been, and ſtill is ſeiſed in his demeſne as of fee of and in a certain meſſuage or dwelling houſe, ſituate in Buckingham, in ſaid county of Bucks, heretofore in the tenure and occupation of one Edmund Durley, and part and parcel of a certain other meſſuage or dwelling houſe in poſſeſſion of ſaid plaintiff, from which it was afterwards ſeparated and divided, and of a certain ſtable, one other outhouſe, edifice, or building called a wood loft, and divers other houſes, there then alſo ſituate, and being with their and every of their appurtenances;

Declaration in caſe in nature of waſte, by landlord, ſeiſed in fee ſimple, againſt tenant for years, actual poſſeſſion, for voluntary and permiſſive waſte, in pulling down wainſcot, and leaving premiſes in bad condition at the end of term.

quod, plaintiff obliged to lay out money in repairs, as well as injured in his eſtate

appurtenances; and whereas the ſaid defendant heretofore and whilſt ſaid plaintiff was ſo ſeiſed as aforeſaid, to wit, on the firſt day of Auguſt, A. D. 1777, and from thence until, and at, and after the committing of the grievance hereafter next mentioned, held the ſaid meſſuage or dwelling houſe firſt above mentioned together with the aforeſaid ſtable and outhouſes of the ſaid plaintiff, with the apputenances, as tenant thereof to him ſaid plaintiff for the reſidue and remainder of a certain term of years thentofore thereof demiſed to him ſaid defendant by ſaid plaintiff, to wit, at B. aforeſaid, yet the ſaid plaintiff in fact ſaith, that ſaid defendant, contriving, and fraudulently and maliciouſly intending wrongfully and unjuſtly to hinder and prejudice ſaid plaintiff in his aforeſaid eſtate of inheritance of and in the ſaid laſt-mentioned meſſuage or dwelling houſe, ſtable, and outhouſe, with the appurtenances, during the time that he the ſaid defendant held the ſame as tenant thereof to ſaid plaintiff as aforeſaid, and whilſt the ſaid plaintiff was ſo ſeiſed thereof as aforeſaid, to wit, on the firſt of April, A. D. 1782, at B. he ſaid defendant wrongfully and unjuſtly broke down, pulled down, broke to pieces, ſpoiled, and deſtroyed, and cauſed, &c to be, &c. a great part of the wainſcoting, flooring, ſtairs, and ſtaircaſes, to wit, twenty ſquare yards of the wainſcoting, twenty ſquare yards of the flooring, forty ſtairs, and twenty yards of the ſtaircaſes, in, of, and belonging to, and part and parcel of ſaid laſt mentioned meſſuage or dwelling houſe, and affixed to the freehold thereof, and broke to pieces, ſpoiled, and deſtroyed, and cauſed, &c. divers of the windows and window frames, to wit, ten glaſs windows and ten window frames, with the lead and iron work thereof, in, of, and belonging to, and part and parcel of the ſaid laſt-mentioned meſſuage or dwelling houſe, affixed to the freehold thereof, and broke down, pulled down, ſpoiled, and deſtroyed, and cauſed, &c. divers, to wit, twenty ſhelves before then affixed and ſet up in, of, and belonging to the ſaid laſt mentioned meſſuage or dwelling houſe and part of the freehold thereof, and broke to pieces, damaged, and ſpoiled, and cauſed, &c. divers, to wit, twenty cocks, twenty hoops, and twenty hinges, in, of, and belonging to the ſaid laſt-mentioned meſſuage or dwelling houſe, and part and parcel of the ſame, and of the freehold thereof, and by and through the means of a great and conſiderable number of perſons, who were taken into and houſed in the ſaid laſt mentioned meſſuage or, &c. without the leave or licence, and againſt the will of the ſaid plaintiff, greatly damaged, daubed, dirtied, and ſpoiled the ſame, and the rooms and aparments thereof, and the floors, wainſcots, and ceilings of the ſame, and alſo broke up, tore up, deſtroyed, and ſpoiled, and cauſed, &c. divers, to wit, four hearths and four chimney pieces, and a great part of the pavements, in, of, and belonging to, and part and parcel of ſaid laſt-mentioned meſſuage or dwelling houſe, and affixed to the freehold thereof, and greatly damaged and ſpoiled, and cauſed, &c. the aforeſaid ſtable and outhouſes

houſes held by him ſaid defendant as aforeſaid, in the roofs, tilings, coverings, and timber thereof, and the materials ariſing and coming from the aforeſaid waſte and devaſtation, to wit, &c. of a large value, in the whole, to wit, of the value of fifty pounds of lawful, &c. took and carried away, and converted and diſpoſed thereof to his own uſe; whereby ſaid plaintiff was, hath been, and is greatly injured and damnified in his aforeſaid eſtate of inheritance of and in the ſaid meſſuage or dwelling houſe, ſtable, and outhouſes ſo held by ſaid defendant as aforeſaid, with the appurtenances, and hath been forced and obliged to lay out and expend a large ſum of money, to wit, the ſum of one hundred pounds of ſuch lawful money as aforeſaid, in and about repairing and making good the damage ſo done to the ſame by ſaid defendant as aforeſaid, to wit, at B aforeſaid: [*Second Count for permiſſive waſte, as follows*:] ſuffered and permitted a great part of the wainſcoting, &c in, of, and belonging, &c. to be wrongfully broken down, &c. [as in firſt Count and in addition] that defendant wrongfully, &c. ſuffered and permitted ſaid meſſuage or, &c. ſo by him held of ſaid plaintiff as aforeſaid to be ruinous, out of repair, and in great decay in various other parts of the roofs, tilings, and coverings of the ſame, and in the floorings, pavements, wainſcoting, ſtairing, windows, and window frames, and in the brick work, wood, and timber thereof, and ſo remain and continue until the end and expiration of the aforeſaid demiſe to him ſaid defendant, when he left and yielded up the ſaid ſeveral premiſes ſo by him held of ſaid plaintiff as aforeſaid, ſo ruinous, in decay, and damaged as aforeſaid, to the ſaid plaintiff; whereby, &c. [as in firſt Count]. [Third Count as ſecond, only ſtating, defendant to be a tenant from year to year.] 2d Count.

V. LAWES.

REED ESQUIRE *againſt* MARTEN AND ANOTHER. } CORNWALL, to wit. Thomas Reed eſquire complains againſt John Marten and James Marten, being, &c. for that whereas the ſaid Thomas at the time of committing of the grievance hereinafter next mentioned, to wit, on the firſt of November 1778, and long before was, and continually from thenceforth hitherto hath been, and ſtill is ſeiſed in his demeſne as of fee of and in divers large pieces and parcels of land, contiguous and adjoining to each other, called and known by the name of Helchiſh, containing together by eſtimation divers, to wit, ten acres of land, and ten acres of paſture, with the appurtenances, ſituate, lying, and being, in the pariſh of Stythians, in the ſaid county of Cornwall, which ſaid tenements with the appurtenances, of the ſaid Thomas, during all the time aforeſaid, have been, and ſtill are in the tenure and occupation of one David Reed, as tenant thereof to the ſaid Thomas, at and under a certain yearly rent, payable by the ſaid David Reed to the ſaid Declaration by reverſioner againſt defendants for digging mines on his eſtates.

ſaid Thomas for the ſame; yet the ſaid John and James, well knowing all and ſingular the premiſes aforeſaid, but contriving and maliciouſly intending, wrongfully and injuriouſly to hurt, injure, aggrieve, and prejudice the ſaid Thomas in this behalf, and to diminiſh and leſſen the value of the ſaid tenements, with the appurtenances, of the ſaid Thomas, and to injure and prejudice the ſaid Thomas in his reverſionary eſtate and intereſt therein, whilſt the ſaid Thomas was ſo ſeiſed thereof, and whilſt the ſame ſo were in the tenure and occupation of the ſaid David Reed as his tenant thereof, to wit, on the ſaid firſt of November 1778, and on divers other days and times, between that day and the day of exhibiting the bill of the ſaid Thomas, at the pariſh of Stythians aforeſaid, in the county aforeſaid, wrongfully and unjuſtly, and without the licence, and againſt the will of the ſaid Thomas, with divers inſtruments, to wit, with pickaxes, ſpades, ſhovels, crows, and other iron inſtruments, ſunk, made, and opened, divers large pits and holes, to wit, fifty pits and fifty holes, of the length of one hundred feet, of the depth of five hundred feet, and of the breadth of one hundred feet, reſpectively in the ſaid tenements with the appurtenances, of the ſaid Thomas, and the ſaid pits and holes ſo ſunk, made, and opened, kept and continued open for a long ſpace of time, to wit, from that time until the day of exhibiting of the bill of the ſaid Thomas, and therein and thereon got and raiſed divers large quantities of earth, ſtones, ſand, and gravel, to wit, five hundred cart loads of earth, five hundred cart loads of ſtone, five hundred cart loads of ſand, and five hundred cart loads of gravel, of two hundred pounds, and ſeiſed, took, and carried away the ſame, and converted and diſpoſed thereof to their own uſe, by reaſon of which ſaid premiſes, the ſaid tenements, with the appurtenances, of the ſaid Thomas, became and were very much injured and damnified, and the reverſionary intereſt and eſtate of the ſaid Thomas therein very much leſſened and diminiſhed in value, to wit, at the pariſh of Stythians aforeſaid, in the county aforeſaid [Second Count, trover for earth, ſtones, ſand, and gravel.] W. LOWNDES

There were two actions for the ſame injury. Sir R. Affleck was entitled to a life eſtate, and the plaintiff Reed to one third. Mr Lowndes, thought they could not join in an action on the caſe, as they were tenants in common of the intereſt in the reverſion and inheritance, being totally diſtinct and ſeveral.

Declaration for pulling down party wall adjoining to plaintiff's houſe, whereby plaintiff's tenement was damaged, and forced to leave it

LONDON, to wit. Thomas Fowler complains of Robert Milne, for that whereas the ſaid Thomas, on, &c. and continually from thence hitherto until, at and after the committing the grievance hereafter next mentioned, was lawfully poſſeſſed of and in a certain meſſuage, with the appurtenances, ſituate, and being at L. aforeſaid, to wit, in the pariſh of, &c. for a certain term of years not then expired, which ſaid meſſuages of the ſaid Thomas during all the time aforeſaid, was ſituate,

ſituate, ſtanding, and being contiguous, and next adjoining to a certain meſſuage of the ſaid Robert, ſituate at L. aforeſaid, in the pariſh of W. aforeſaid, nevertheleſs the ſaid Robert, well knowing the premiſes, but maliciouſly contriving and intending to injure the ſaid Thomas, and to annoy him and his tenant in the uſe and enjoyment of his ſaid meſſuage, with the appurtenances, to wit, on, &c. at, &c.; greatly hurt, ſhook, damaged, and weakened the walls of the ſaid meſſuage of the ſaid Thomas, by then and there taking down and removing the ſaid meſſuage of the ſaid Robert, ſo being contiguous and adjoining to the ſame meſſuage of the ſaid Thomas; and whereas alſo the ſaid Thomas on, &c. and continually from thence until, &c. was lawfully entitled unto a certain other meſſuage with the appurtenances, ſituate, &c. at L. aforeſaid, in the pariſh of W. aforeſaid, for the remainder of a certain other long term of years, of which ſaid meſſuage, one Lucy Carr, at the time of the committing of the grievance hereafter next mentioned, was tenant to the ſaid Thomas, at and under the yearly rent of twenty pounds, payable by the ſaid Lucy to the ſaid Thomas for the remainder of the aforeſaid term of the ſaid Thomas in the ſame meſſuage; and whereas the ſaid laſt-mentioned meſſuage, before and at the time of committing the grievance hereafter next mentioned, was divided by a party wall from a certain other meſſuage of the ſaid Robert, ſituate, &c.; nevertheleſs the ſaid Robert, well knowing the premiſes, but, &c. the ſaid Thomas, and to annoy him and his tenants in the uſe and enjoyment of his ſaid laſt mentioned meſſuage, with the appurtenances, whilſt the ſaid Thomas was ſo poſſeſſed of his ſame meſſuage with the appurtenances, to wit, on, &c. at, &c. broke down, damaged, broke into, and weakened the ſaid party wall, in ſeparating and dividing the ſaid laſt-mentioned meſſuage of the ſaid Thomas from the ſaid laſt-mentioned meſſuage of the ſaid Robert, and thereby greatly diſturbed and diſquieted the ſaid Lucy Carr, the tenant of the ſaid meſſuage of the ſaid Thomas, in the enjoyment and occupation thereof, inſomuch that the ſaid Lucy Carr then being a tenant of the ſaid Thomas in poſſeſſion of his ſaid laſt-mentioned meſſuage, afterwards, to wit, on, &c. was obliged to quit, and actually did quit the ſame, and refuſed to continue tenant thereof to the ſaid Thomas, that is to ſay, at, &c., whereupon the ſaid Thomas ſaith that he is injured, and hath ſuſtained damage to the value of two hundred pounds, and therefore he brings his ſuit, &c.

W. Y.

YORKSHIRE, to wit. Whereas the ſaid plaintiff before the committing of the grievance hereinafter next mentioned, to wit, on the firſt of July 1787, and continually from thenceforth hitherto hath been, and ſtill is ſeiſed in his demeſne as of fee of and in a certain cloſe of land, ſituated, lying, and being, in the pariſh of , in the ſaid county, which ſaid cloſe, during all the time aforeſaid, was and ſtill is in the poſſeſſion and occupation of one

Plaintiff [illegible] in fee of [illegible] of land, [illegible] ging pits [illegible] quarries, [illegible] ling down [illegible]

W. Y.

W. Y. as tenant thereof to the ſaid plaintiff; nevertheleſs the ſaid defendants, well knowing the premiſes, but contriving wrongfully, and injuriouſly intending to injure the ſaid plaintiff in his eſtate and intereſt of and in the ſaid cloſe with the appurtenances, and whilſt he the ſaid plaintiff was ſo ſeiſed thereof as aforeſaid, and during the poſſeſſion of the ſaid W. as tenant thereof to the plaintiff, to wit, on the firſt of July 1787, and on divers other days and times, between that day and the day of, &c. at the pariſh aforeſaid, in the ſaid county, wrongfully and injuriouſly, and without the licence and conſent of the plaintiff, and againſt his will, with ſpades, ſhovels, and other iron inſtruments, dug up, turned up, and ſubverted the earth and *ſoil* of the ſaid plaintiff in the ſaid cloſe, and then and there wrongfully and injuriouſly, and without the licence and conſent of the ſaid plaintiff, and againſt his will, dug, made, and ſunk, divers quarries, pits, and holes in the ſaid cloſe of the ſaid plaintiff there, to wit, fifty quarries, fifty pits, and fifty holes of great length, breadth, and depth reſpectively, to wit, fifty yards in length, fifty yards in breadth, and fifty yards in depth reſpectively, and from and out of the ſaid quarries, pits, and holes, ſo dug, made, and ſunk, wrongfully and injuriouſly, and without the licence and conſent of the ſaid plaintiff, and againſt his will, raiſed, dug, and got divers large quantities of earth, ſoil, ſtone, and gravel, to wit, five hundred cart loads of earth, five hundred cart loads of ſtones, five hundred cart loads of ſoil, and five hundred cart loads of gravel, of the value of pounds of, &c. and took and carried away the ſame, and converted and diſpoſed thereof to his own uſe, by reaſon and means whereof, the eſtate and intereſt of the ſaid plaintiff in the ſaid cloſe with the appurtenances, is greatly prejudiced and diminiſhed, and leſſened in value, to wit, at, &c.. And whereas alſo the ſaid plaintiff, before the time of committing the grievance hereinafter next mentioned, to wit, on, &c. and continually from thenceforth hitherto hath been, and ſtill is ſeiſed in his demeſne as of fee of and in a certain other cloſe of land called the Stack Yard, and a certain wall erected, ſtanding, and being, in and upon the ſaid laſt mentioned cloſes, ſituate, lying, and being at the pariſh aforeſaid in the ſaid county, which ſaid laſt mentioned cloſe and wall, during all the time laſt aforeſaid, were and ſtill are in the poſſeſſion and occupation of the ſaid W. Y as tenant thereof to the ſaid plaintiff, nevertheleſs the ſaid defendants well knowing the premiſes, but contriving, and wrongfully and injuriouſly intending to injure the ſaid plaintiff in his eſtate and intereſt of and in the ſaid laſt mentioned cloſe and wall, whilſt the ſaid plaintiff was ſo ſeiſed thereof as aforeſaid, and during the poſſeſſion of the ſaid W. Y. as tenant thereof as aforeſaid, to wit, on the firſt of July 1787, and on divers, &c. at, &c. wrongfully and injuriouſly, and without the licence and conſent, and againſt the will of the ſaid plaintiff, pulled down, threw down, proſtrated, and deſtroyed the ſaid wall of the ſaid plaintiff in the ſaid laſt-mentioned cloſe, then erected, ſtanding, and being,

2d Count, plaintiff ſeiſed in fee of a cloſe, and a wall ſtanding thereon

being, by reaſon and means whereof the eſtate and intereſt of the ſaid plaintiff in the ſaid laſt mentioned cloſe and the ſaid wall, then there erected, ſtanding, and being, are greatly damnified, injured, and leſſened in value, to wit, at, &c.: [Count for trover, for five hundred cart loads of earth, five hundred cart loads of ſtones, five hundred cart loads of ſoil, and five hundred cart loads of gravel, bricks, rubbiſh.] *Drawn by* MR. J. GRAHAM.

Plaintiff ſeiſed in fee of divers lands, &c. for cutting timber.

BERKSHIRE, to wit. Edmund Seymour eſquire complains of Richard Povey the younger and William Povey being, &c. for that whereas the ſaid E. before and at the time of committing the grievance hereinafter next mentioned, to wit, on the firſt of January 1788, and continually from thenceforth hitherto hath been, and ſtill is ſeiſed in his demeſne as of fee of and in divers lands and tenements, with the appurtenances, ſituate, lying, and being, in the pariſh of , in the ſaid county of Berks, which ſaid lands and tenements, during the time aforeſaid, were and ſtill are in the poſſeſſion and occupation of one R. P. the elder as tenant thereof to the ſaid E; and whereas alſo whilſt the ſaid E was ſo ſeiſed of the ſaid lands and tenements, with the appurtenances, and whilſt the ſaid R. P. the elder was ſo poſſeſſed thereof as aforeſaid, to wit, on the firſt of January 1788 divers and very many timber trees and other trees, likely to become timber were growing and being, in, and upon the ſaid lands and tenements, with the appurtenances, and parcel of the freehold and inheritance thereof, to wit, at the pariſh aforeſaid, in the ſaid county, yet the ſaid R. P. the younger and W. well knowing the premiſes, but contriving, and wrongfully and injuriouſly intending to injure the ſaid Edmund, and to leſſen and diminiſh his eſtate and intereſt of and in the ſaid premiſes, whilſt the ſaid E was ſo ſeiſed, and the ſaid R. P. the elder ſo poſſeſſed as aforeſaid, of and in the premiſes aforeſaid, with the appurtenances, to wit, on ſaid firſt of January 1788, and on divers other days and times, &c. at the pariſh aforeſaid, in the ſaid county, wrongfully and injuriouſly, without the licence and conſent, and againſt the will of the ſaid E. pulled down, cut down, grubbed up, proſtrated, and deſtroyed, divers timber trees, and other trees, likely to become timber, to wit, one hundred oak trees, ten aſh trees, ten elm trees, ten maiden oak trees, ten maiden aſh trees, and ten maiden elm trees of great value, to wit, of the value of fifty pounds of, &c. then ſtanding, growing, and being, in and upon the ſaid premiſes, and part and parcel of the freehold and inheritance thereof, and then and there, wrongfully and injuriouſly, without the licence and conſent, and againſt the will of the ſaid Edmund, lopped, topped, and headed, divers other timber trees, and other trees likely to become timber, to wit, ten other oak trees, &c. &c. of other great value, to wit, of the value of other fifty pounds of, &c. then ſtanding, growing, and being, in and upon the ſaid premiſes, and part and parcel of the freehold and

and inheritance thereof, and the materials thereof coming, that is to ſay, ten cart loads of timber trees, ten cart loads of other trees likely to become timber, ten cart loads of other trees, ten cart loads of branches, ten cart loads of boughs, ten cart loads of chips, and ten cart loads of loppings of other great value, to wit, of the value of other fifty pounds of, &c. then and there ſeiſed, took, and carried away, and converted and diſpoſed thereof to their own uſe, by reaſon and means of which ſaid premiſes, the eſtate and intereſt of the ſaid plaintiff in the ſaid lands and tenements, with the appurtenances, is greatly injured and damnified, diminiſhed and leſſened in value, to wit, at, &c. Trover for ten cart loads of timber trees, ten cart loads of other trees, likely to become timber, ten cart loads of other trees, ten cart loads of branches, ten cart loads of boughs, ten cart loads of chips, and ten cart loads of loppings. Damage five hundred pounds

Drawn by MR. J. GRAHAM.

Declaration againſt defendants for ſtopping up a trench in his cloſe which conveyed the waſte water of a mill ſtream near to defendant's cloſe, into plaintiff's cloſe for the melioration of the ſoil.

W. W. *againſt* E. C. } ——, to wit. For that whereas the ſaid plaintiff on, &c. was and from thenceforth hitherto hath been, and ſtill is lawfully poſſeſſed of a certain cloſe called, &c. ſituate, lying, and being, in the pariſh of, &c. in the ſaid county of C. which ſaid cloſe now is, and during all the time aforeſaid hath been contiguous and next adjoining to a certain cloſe of the ſaid defendant called, &c. ſituate, lying, and being in the pariſh aforeſaid, in the ſaid county, and which ſame cloſe of the ſaid defendant, during all that time, was and ſtill is contiguous to a certain mill ſtream, in the pariſh aforeſaid, running down to, and ſupplying a certain mill called, &c.; and whereas the waſte water of the ſaid mill ſtream, during all that time, ought to have run and flowed through a certain trench or channel in the ſaid cloſe of the ſaid defendant into the ſaid cloſe of the ſaid plaintiff, and the ſaid William by reaſon of his poſſeſſion of the ſaid cloſe, during all the ſaid time ought to have had the uſe, benefit, and advantage of the ſaid waſte water for the watering, manuring, bettering, and improving the ſaid cloſe of the ſaid plaintiff at all ſeaſonable times, at his will and pleaſure, yet ſaid defendant, well knowing the premiſes, but contriving, and wrongfully and maliciouſly intending unjuſtly to injure, prejudice, and aggrieve him the ſaid plaintiff in this behalf, and to deprive him of the uſe and benefit of the ſaid waſte water, afterwards and when there was more than ſufficient water for the working of the ſaid mill, and during the time that the ſaid William was ſo, as aforeſaid, poſſeſſed of his ſaid cloſe, to wit, on, &c. and on divers other days, &c. at, &c. wrongfully and unjuſtly ſtopped up, and cauſed to be ſtopped up the ſaid trench or channel in the ſaid cloſe of the ſaid defendant, and from thence hitherto hath kept the ſame ſo ſtopped up, and thereby during all that time wrongfully and unjuſtly prevented the ſaid waſte water from running and flowing into the ſaid cloſe of the ſaid plaintiff; whereby the ſaid plaintiff

hath

hath during all the time aforeſaid been, and ſtill is deprived of the uſe and benefit of the ſaid waſte water, and has wholly loſt the ſame, to wit, at, &c.. And whereas, &c. [ſame as the firſt, only ſtating the water to run and flow through a certain floodgate in the cloſe of defendant on the ſide of the ſaid mill ſtream communicating with a certain trench or channel in plaintiff's cloſe, and that the plaintiff ought to have the benefit of the water through the floodgate, which the defendant ſtopped up, &c. &c as before.] Damages, &c. F BULLER.

LANCASHIRF, to wit. Be it remembered, that on Friday next after the morrow of the Holy Trinity, in this ſame term, before our ſovereign lord the king at Weſtminſter, come Robert Kerſhaw, by J P his attorney, and brings in the court of our ſaid lord the king, before the king himſelf now here, his bill againſt William Lord, being, &c of a plea of treſpaſs on the caſe, and there are pledges for the proſecution to wit, John Doe and Richard Roe, which ſaid bill follows in theſe words, to wit, Lancaſhire, to wit Robert Kerſhaw complains againſt W L being, &c.; for that whereas the ſaid R. on the firſt of January 1784, and long before, was, and from thence hitherto hath been, and ſtill is lawfully poſſeſſed of a certain mill uſed for the carding of cotton and ſcribbling of ſheep's wool, with the appurtenances, called P. M. ſituate and being at W. in the pariſh of R. in the county of L aforeſaid, and in which ſaid mill he the ſaid Robert, during all the time aforeſaid, uſed, exerciſed, and carried on the trade, buſineſs, and employment of a carder of cotton and ſcribbler of ſheep's wool, to wit, at the pariſh of R. aforeſaid, in the county aforeſaid And whereas a certain water courſe from time, &c. until the time of the committing of the grievance hereafter next mentioned, did run and flow, and was accuſtomed to run and flow, and at the time of the committing of the grievance hereafter next mentioned, and from thence hitherto of right ought to have run and flowed from the upper ſide of a certain cloſe of the ſaid William called F ſituate and being at the pariſh aforeſaid, into, through, and along the ſaid cloſe called F unto the ſaid mill of the ſaid R in great abundance for the ſupplying the ſaid mill with water for the driving and working of the ſaid mill, yet the ſaid William, well knowing all and ſingular the premiſes, but contriving and maliciouſly intending wrongfully and unjuſtly to hurt, injure, prejudice, and aggrieve the ſaid Robert in his poſſeſſion of the ſaid mill with the appurtenances, whilſt the ſaid Robert was ſo poſſeſſed of the ſaid mill with the appurtenances, to wit, on the ſaid firſt of January 1784 aforeſaid, at the pariſh of R. aforeſaid, in the county of L aforeſaid, wrongfully and unjuſtly made, erected, and ſet up, and cauſed and procured to be, &c a certain mound or dam, with a certain large ſtone, earth, ſods, and rubbiſh, in, over, and acroſs the ſaid water courſe, in that part thereof which is in the ſaid cloſe of

Record, for obſtructing and diverting the water courſe which ſupplied plaintiff's cotton mill

the ſaid William called F. at the pariſh of R. aforeſaid, in the county aforeſaid, and unjuſtly kept and continued the ſaid mound or dam ſo there wrongfully and unjuſtly made, erected, and ſet up, for a long time, to wit, from thence hitherto, and thereby during all that time wrongfully and unjuſtly obſtructed and ſtopped the water of the ſaid water courſe from running in its ancient and accuſtomed courſe to the ſaid mill of the ſaid Robert, and wrongfully and injuriouſly turned and diverted the water of the ſaid water courſe out of its ancient and accuſtomed courſe, and from the mill of the ſaid Robert, upon and over the ſaid cloſe of the ſaid William called F. at the pariſh of R. aforeſaid; by reaſon whereof the ſaid Robert from thence hitherto could not have water ſufficient for the working of his ſaid mill, and the ſaid mill hath during all the time aforeſaid been of no uſe whatſoever to the ſaid Robert for want of a ſufficient ſupply of water for the working of the ſame, occaſioned by the premiſes aforeſaid; and the ſaid Robert hath during all that time thereby loſt the whole benefit, profit, and advantage of his ſaid mill, and is greatly prejudiced and damnified in his poſſeſſion thereof, and in his ſaid trade, buſineſs, and employment, to wit, at the pariſh of R. aforeſaid, in the ſaid county: And whereas alſo the ſaid Robert, on the ſaid firſt of January 1784, at the pariſh of R. aforeſaid, in the county aforeſaid, and long before, was, and from thence hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain other ancient water mill, with the appurtenances, ſituate and being at the pariſh of R. aforeſaid, in the county aforeſaid, and by reaſon of ſuch his poſſeſſion thereof, during all that time of right ought to have had and enjoyed the free uſe and benefit of the water of a certain other water courſe, which before and until that time was uſed and accuſtomed to run and flow, and during all that time of right ought to have run and flowed, and ſtill of right ought to run and flow from and through the ſaid cloſe of the ſaid W. called I. ſituate and being at the pariſh of R. aforeſaid, to the ſaid laſt mentioned water mill of the ſaid Robert in great abundance, for the ſupplying of the ſame mill with water for the working thereof, to the great benefit and advantage of the ſaid Robert, yet the ſaid William, well knowing the premiſes, but contriving and fraudulently intending wrongfully and unjuſtly to hurt, injure, and prejudice the ſaid Robert, and to deprive him of the benefit and advantage of his mill laſt aforeſaid, while the ſaid Robert was poſſeſſed of his ſaid laſt-mentioned mill with the appurtenances, to wit, on the ſame day and year aforeſaid, at the pariſh of R. aforeſaid, in the county aforeſaid, wrongfully and unjuſtly ſet up and erected, and cauſed and procured to be ſet up and erected a certain large ſtone or flag in, over, and acroſs the ſaid laſt-mentioned water courſe in the ſaid cloſe of the ſaid William called F. and wrongfully and injuriouſly kept and continued, and cauſed to be kept and continued the ſaid ſtone or flag ſo there ſet up and erected for a long ſpace of time, to wit, from thence hitherto, and wrongfully and unjuſtly ſtopped and obſtructed the water of the

the ſaid laſt-mentioned water courſe from running and flowing in its ancient and accuſtomed courſe to the laſt-mentioned mill of the ſaid Robert, whereby the ſaid Robert was during all that time greatly hindered and obſtructed in the working of his ſaid mill for want of water ſufficient for the working thereof, and thereby during all that time loſt the profit and advantage of his ſaid mill, to wit, at the pariſh of R. aforeſaid, in the county aforeſaid; to the damage of the ſaid R. of five hundred pounds; and therefore, &c.

Plea, not guilty.

And the ſaid William, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and ſays that he is not guilty of the premiſes above laid to his charge in manner and form as the ſaid Robert hath above thereof complained againſt him; and of this he puts himſelf upon the county; and the ſaid Robert doth the like; therefore let there be a jury made thereof; and becauſe the iſſue aforeſaid between the parties above joined ought to be tried by men of the county palatine of Lancaſter of the body of the ſaid county where his ſaid majeſty's writ doth not run, and not elſewhere; therefore as to trying the iſſue aforeſaid between the parties above joined, let the record of the plaint aforeſaid be ſent to his majeſty's juſtices of the ſaid county of L. ſo that the ſame juſtices, by his majeſty's writ of that county to be duly made out, do command the ſheriff of the ſame county that he cauſe twelve free and lawful men of the borough of the ſaid county of L. to come before the ſaid juſtices at their next ſeſſions for the ſaid county after the ſaid record ſhall be delivered to them, each of whom having ten pounds a-year at leaſt in lands, tenements, or rents, by whom the truth of the matter may the better be known and enquired into, and who are in no wiſe related either to the ſaid Robert or to the ſaid William, to recognize and make a jury of the county between the ſaid parties in the plea aforeſaid, becauſe as well the ſaid William as the ſaid Robert, between whom the controverſy is, have put themſelves upon that jury; and when the verification and iſſue aforeſaid ſhall be there made and tried, then the ſaid juſtices ſhall ſend the record of the plaint aforeſaid, together with every thing that ſhall be done thereupon before them in his majeſty's court there, to our ſaid lord the king at Weſtminſter at a certain day which the ſame juſtices of the ſame county palatine ſhall appoint to the ſame parties to be in the ſame court there to hear judgment thereupon, &c.

Mittimus to county palatine of Lancaſter.

The mill in queſtion was originally a corn mill, but was converted into a ſcribbling mill about three years ſince — Can any objection be raiſed to the preſcription in the firſt Count on this ground? The mill in the ſecond Count is deſcribed as an ancient water mill, without its being ſtated what particular kind of mill it was. Plaintiff rented the mill.

I think defendant needs only to plead the general iſſue of not guilty of the premiſes, on which he may give in evidence the whole of his defence; and if defendant did no more than take the water for the improvement of his land, as all former occupiers had done, I think that is a good anſwer on the merits. Or if the water was turned into its old courſe after it had run over defendant's land, ſo as to occaſion

ſion no real injury to plaintiff, or an injury ſo minute as that no perſon would complain of it I think plaintiff would not be able to ſucceed in this action. The objections to the form of the action will not, in my apprehenſion, be allowed to nonſuit the plaintiff.

Geo. Wood.

Hilary Term, 29. Geo. III.

Declaration by mortgagee for more years againſt defendant for pulling down a cottage which was in the poſſeſſion of two tenants *per quæ* plaintiff's reverſionary intereſt was much damnified.

SUFFOLK, to wit. J. R complains of R. F. and R. K. being, &c., for that whereas the ſaid plaintiff, on, &c and before was, and from thence hitherto hath been, and ſtill is poſſeſſ d of and in, and entitled to a certain cottage, with the appurtenances, ſituate, ſtanding, and being in A. in the ſaid county of S. for the reſidue and remainder of a certain term of one thouſand years, commencing on the ſeventeenth of September 1777, from thence unto the full end and term of one thouſand years. *part of* which ſaid cottage, with the appurtenances, on, &c and continually from thence until and at the time of committing the grievance hereinafter mentioned, was in the poſſeſſion and occupation of one T. S. as tenant thereof to the ſaid plaintiff, *and the reſidue of the ſaid cottage on, &c. and from thence continually until and at the time of the committing of the grievance hereinafter next mentioned, and afterwards, was in the occupation and poſſeſſion of one W. D.* as tenant thereof to the ſaid plaintiff ſo being poſſeſſed and entitled as aforeſaid, yet the ſaid defendants, well knowing the premiſes, but contriving and wrongfully and maliciouſly intending to injure the ſaid J R. with reſpect to his reverſionary intereſt in the ſaid cottag , and to diminiſh and leſſen thereof as aforeſaid, whilſt the ſaid plaintiff was ſo poſſeſſed and entitled to the ſaid premiſes as aforeſaid, and the ſaid T. S. *and W. D.* were ſo *reſpectively* poſſeſſed thereof as aforeſaid, to wit, on, &c. and on divers other days and times between that day and the day of exhibiting the bill of the ſaid plaintiff, at, &c. in, &c. wilfully, wrongfully, and injuriouſly, and without the licence and conſent, and againſt the will of the ſaid plaintiff, broke down, pulled down, proſtrated, broke to pieces, ſpoiled, and deſtroyed the roof, walls, doors, door poſts, windows, window frames, ceilings, wainſcotings, and floors of divers rooms *of that part* of the ſaid cottage *in the poſſeſſion and occupation of the ſaid T. S.* to wit, twenty ſquare yards of, &c. and the materials thereof coming, of great value, to wit, of the value of two hundred pounds, took and carried away, and cauſed and procured to be taken and carried away and converted and diſpoſed thereof to their own uſe, whereby *not only the ſaid part of the* ſaid cottage *in the poſſeſſion and occupation of the ſaid T. S.* was wholly deſtroyed, *but alſo the remaining part of the ſaid cottage in the poſſeſſion and occupation of the ſaid W. D. became and was thereby greatly ſhook, weakened, damaged, ruinous, and impaired, and of no value,* and the ſaid plaintiff by means of the premiſes became, and was, and ſtill is greatly injured and damnified in his reverſionary intereſt of and in *the whole of* the ſaid cottage, and the ſame is greatly leſſened and diminiſhed in value, to wit, at, &c. in, &c.. And whereas, &c.

[ſecond

[ſecond Count ſame as firſt, only ſtating T. S. to be ſole tenant of the cottage by omitting what is in Italic]: And whereas, &c. [Count in trover for the materials.]

Drawn by Mr. J. GRAHAM.

Trinity Term, 27 Geo III.

MATTINSON *againſt* WILSON. } WESTMORLAND, to wit. Robert Wilſon, late of, &c. was attached to anſwer John Mattinſon the younger of a plea of treſpaſs on the caſe, and whereupon the ſaid John, by A. B his attorney, complains, for that whereas the ſaid John, on the firſt of January 1782, long before, was, and continually from thence hitherto hath been, and ſtill is lawfully poſſeſſed of and in a certain ancient meſſuage, with the appurtenances, ſituate, lying, and being at Longſtedale aforeſaid, in the pariſh of Kirby Kendal, in the ſaid county of Weſtmorland, and by reaſon of his poſſeſſion thereof during all the time aforeſaid of right had, and ought to have had, and ſtill of right ought to have common of turbary in and upon a certain large piece or parcel of ground called Gander Barrow, otherwiſe Beddal Foreſt, in the pariſh of Kirby Kendal aforeſaid, in the ſaid county of W. to wit, to dig and take turf and peat in and upon the ſaid piece or parcel of ground for neceſſary fuel to be ſpent, burnt, and conſumed in the ſaid meſſuage of the ſaid John every year and at all times of the year, as occaſion required, as to the ſaid meſſuage, with the appurtenances, belonging and appertaining, nevertheleſs the ſaid Robert, well knowing the premiſes, but wrongfully contriving and intending to injure the ſaid John in this behalf, and to deprive him of the benefit and enjoyment of his ſaid common of turbary, whilſt the ſaid John was ſo poſſeſſed of his ſaid meſſuage, with the appurtenances, to wit, on the ſaid firſt of January 1782, and on divers other days and times between that day and the day of ſuing forth the original writ of the ſaid John, wrongfully and injuriouſly dug and cut, and cauſed and procured to be dug and cut divers large quantities of peats and turfs, to wit, five thouſand cart loads of peats, and five thouſand cart loads of turfs, upon, from, and off the ſaid piece or parcel of ground and took, carried away, ſold, and diſpoſed of the ſame to divers perſons to the ſaid John unknown, whereby the ſaid John, during all the time aforeſaid, could not have or enjoy his ſaid common of turbary in and upon the ſaid piece or parcel of ground in ſo ample and beneficial a manner as he ought of right during all that time to have had and enjoyed the ſame, but the ſaid John during all that time was wrongfully hindered and deprived of great part of the benefit, profit, and advantage ariſing to him therefrom. And whereas alſo the ſaid John, on the ſaid firſt of January 1782, and long before was, and continually from thenceforth hitherto hath been, and ſtill is poſſeſſed of and in a certain other meſſuage, and divers, to wit, fifty acres of land, with the appurtenances, ſituate, lying, and being at Longſtedale aforeſaid,

Declaration againſt defendant for digging turfs and peats on a piece of ground whereon plaintiff was entitled to common of turbary in right of meſſuage, and carrying them away, and converting, &c. *quod* plaintiff could not enjoy his ſaid common of turbary in ſo ample a manner as he ought to have done.

aforeſaid, in the pariſh of Kirby Kendal aforeſaid, in the county aforeſaid, and the ſaid John, by reaſon of his poſſeſſion of the ſaid meſſuage and land laſt mentioned, with the appurtenances, during all the time laſt aforeſaid, had, and of right ought to have had, and ſtill of right ought to have common of paſture in, upon, and throughout a certain other large parcel of ground called Gander Barrow, otherwiſe Beddal Foreſt, ſituate, lying, and being at the pariſh of Kirby Kendal aforeſaid, in the ſaid county of Weſtmorland, for his cattle in manner following, that is to ſay, fourteen cattle-gates, or rights of paſture of cattle, to be computed, uſed, and enjoyed as follows, that is to ſay, the paſturage of one bull, cow, ox, or heifer of one year, except oxen bred upon other places than the ſaid laſt-mentioned meſſuages or tenement of the ſaid John, and certain other tenements and parcels of tenements in Longſledale aforeſaid, which were heretofore cuſtomary tenements held of the manor of Longſledale aforeſaid, in the ſaid county, or the paſturage of one horſe, mare, or gelding under the age of one year, or of eight ſheep, to be computed, uſed, and enjoyed as one cattle-gate, and the paſture of one horſe, mare, or gelding of greater age than the age of one year to be accounted, uſed, and enjoyed as two cattle-gates, and alſo common of paſture for one work horſe, the ſaid ſeveral cattle-gates and common of paſture for one work horſe to be uſed and enjoyed from the firſt of May until the twenty-ninth of September in every year, and alſo common of paſture for twenty eight lambs from the fifteenth of Auguſt to the twenty-ninth of September in each and every year, as to the ſaid laſt-mentioned meſſuage and land of the ſaid John, with the appurtenances, belonging and appertaining; nevertheleſs the ſaid Robert, well knowing the premiſes laſt aforeſaid, but wrongfully and injuriouſly contriving and intending to injure the ſaid John in this behalf, and to deprive him of great part of the profit, benefit, and enjoyment of his ſaid common of paſture, afterwards, and whilſt the ſaid John was ſo poſſeſſed of his ſaid laſt-mentioned meſſuage and land, with the appurtenances, as aforeſaid, and entitled to the ſaid common of paſture as aforeſaid, to wit, on the ſaid firſt of January 1782, and on divers other days and times between that day and the day of ſuing forth the original writ of the ſaid John, wrongfully and injuriouſly dug up, cut up, and pared off, and cauſed to be dug, cut up, and pared off divers large quantities of the turf, earth, peat, ſoil, and ſurface of the laſt mentioned parcel of ground called G. B. otherwiſe B. Foreſt, to wit, five hundred cart loads of turf, five hundred cart loads of earth, five hundred cart loads of peat, five hundred cart loads of ſoil, and five hundred perches of ſurface of the ſame parcel of ground, and took and carried away the ſame; whereby the ſaid J. could not have and enjoy his ſaid common of paſture at and during the ſeveral times and in manner in that behalf above mentioned in and upon the ſaid parcel of ground in ſo ample and beneficial a manner as he ought of right to have had and enjoyed the ſame, and the ſaid John hath been wrongfully hindered and deprived of great part of

the benefit, profit, and advantage thereof, to wit, at the parish of Kirby Kendal aforesaid, in the said county: And whereas also the said John, on the first of January 1782, and long before, was, and continually from thenceforth hitherto hath been, and still is lawfully possessed of and in a certain other messuage, and divers, to wit, fifty other acres of land, with the appurtenances, situate, lying, and being at Longsledale aforesaid, in the parish of Kirby Kendal aforesaid, in the county aforesaid, and the said John, by reason of his possession of the said last-mentioned messuage and land, with the appurtenances, during all the time last aforesaid, had, and of right ought to have had, and still of right to have common of pasture in, upon, and throughout a certain other large parcel of ground called Gander Barrow, otherwise Bedgal Forest, situate, lying, and being at the parish of Kirby Kendal aforesaid, in the said county of Westmorland, for his cattle levant and couchant in and upon his said last mentioned messuage and land, with the appurtenances, in manner following, that is to say, fourteen cattle-gates, or rights of pasture for cattle levant and couchant in and upon the said last-mentioned messuage and land of the said John, with the appurtenances, to be computed, used, and enjoyed as follows, that is to say, the pasturage of one bull, cow, ox, or heifer of the age of one year, except oxen bred upon other places than the said last mentioned messuage or tenements of the said John, and certain other tenements and parcels of tenements in Longsledale aforesaid, which were heretofore customary tenements held of the lord of the manor of Longsledale, in the said county of W. or the pasturage of one horse, mare, or gelding under the age of one year, or of eight sheep levant and couchant in and upon the last-mentioned messuage and land of the said John, to be computed and enjoyed as one cattle-gate, and the pasturage of one horse, mare, or gelding of greater age than the age of one year to be accounted, used, and enjoyed as two cattle-gates, and also common of pasture for one work horse levant and couchant in and upon the said last mentioned messuage and land of the said John, with the appurtenances, the said several cattle gates and common of pasture for the said work horse to be used and enjoyed from the first of May until the twenty ninth of September in every year, and also common of pasture for twenty-eight lambs levant and couchant in and upon the said last mentioned messuage and land of the said John, with the appurtenances, from the fifteenth of August to the twenty-ninth of September in each and every year, to the said last mentioned messuage and land of the said John, with the appurtenances, belonging and appertaining; nevertheless, &c. &c. [gravamen same as in second Count, and so on to the end]: And whereas also the said John, on the first of January 1782, and long before, was, and continually from thence hitherto hath been, and still is lawfully possessed of and in a certain other messuage, and divers, to wit, fifty acres of land, with the appurtenances, situate, lying, and being at Longsledale aforesaid, in the parish of Kirby Kendal aforesaid, in the county of W.

2d Count, for digging turfs, earth, peat, fells, and surface of a piece of ground whereon plaintiff had a right of common for his cattle, &c. quod, &c.

3d Count.

aforeſaid, and by reaſon of his poſſeſſion thereof the ſaid John, for all the time laſt aforeſaid, of right had, and during all the time laſt aforeſaid ought to have had, and ſtill of right ought to have common of paſture for all his cattle levant and couchant in and upon the ſaid laſt-mentioned meſſuage and land, with the appurtenances, in, upon, and throughout a certain other large parcel of ground called Gander Barrow, otherwiſe, &c. in the pariſh, &c. every year and at all times of the year, as to the ſaid laſt mentioned meſſuage and land, with the appurtenances, belonging and appertaining, nevertheleſs, &c. &c. [gravamen ſame as in ſecond Count, and ſo on to the end of the Count]; whereupon the ſaid John ſays he is injured, and hath ſuſtained damage to the value of five hundred pounds, and therefore, &c.

A. CHAMBRE.

Counts againſt defendant, for ſuffering premiſes to be out of repair, &c.

FOR that whereas the ſaid Thomas heretofore, to wit, on the firſt day of January, in the year 1786 aforeſaid, and long before, and from thence until and at the time of the ſeveral grievances in this Count mentioned, was in the poſſeſſion and occupation of a certain other farm conſiſting of a meſſuage or dwelling houſe, and other buildings, and of divers cloſes and parcels of land, ſituate, lying, and being within the ſaid pariſh of M. in the ſaid county of H. with the appurtenances, and during all that time held and occupied the ſame as tenant thereof to the ſaid L. T. by virtue of a certain demiſe thereof before then made to the ſaid Thomas by the ſaid L. T. to whom the reverſion thereof, during all the time laſt aforeſaid, belonged, under certain terms and conditions ſtipulated between them; and the ſaid Thomas afterwards, to wit, on the ſaid tenth of October now laſt paſt, (at which time the ſaid demiſe thereof became and was ended and determined), duly ſurrendered and yielded up the ſaid farm to the ſaid L. T. to wit, at the pariſh aforeſaid, yet the ſaid Thomas, contriving and maliciouſly intending to aggrieve the ſaid L. T. in this behalf, and to injure him in his reverſionary eſtate and intereſt of and in the ſaid farm, with the appurtenances, whilſt he ſo held and occupied the ſame as aforeſaid, to wit, on the day and year firſt above-mentioned, and from thence until the time of his ſurrendering the ſaid farm as aforeſaid, wrongfully and injuriouſly permitted and ſuffered the roof of the ſaid meſſuage and other buildings reſpectively to be greatly out of repair, whereby the floor, beams, and other timbers of and belonging to the ſaid meſſuage and other buildings became rotten and decayed, and the ſaid Thomas, on divers days and times during the time aforeſaid, wrongfully and injuriouſly broke to pieces and deſtroyed divers, to wit, two hundred panes of the glaſs windows of the ſaid meſſuage, the ſaid glaſs windows being in, and part, and parcel of the ſame meſſuage, and affixed to the freehold thereof, and the ſaid Thomas, on divers days and times during that time, wrongfully and injuriouſly felled, grubbed up, and deſtroyed divers trees, to wit, five hundred oaks, five hundred aſhes,

aſhes, five hundred elms, and five hundred other trees, at thoſe times reſpectively growing upon the ſaid farm, and of a large value, to wit, of the value in the whole of one hundred pounds of lawful, &c.; and wrongfully and injuriouſly lopped, topped, and cauſed and procured to be lopped and topped divers other timber trees, to wit, five hundred other oaks, five hundred other aſhes, five hundred other elms, at thoſe times reſpectively growing upon the ſaid farm, and took and carried away the timber and wood, to wit, five hundred cart loads of timber, and five hundred cart loads of wood coming of the ſaid ſeveral trees ſo felled, grubbed up, lopped, and topped as aforeſaid, being of a large value, to wit, of the value of one hundred pounds of like, &c. and converted and diſpoſed of the ſaid timber and wood to his own uſe, and alſo on divers other days and times aforeſaid, during the time aforeſaid, wrongfully and injuriouſly cauſed and procured divers cattle, to wit, twenty horſes, twenty cows, and two hundred ſheep to be turned into certain woods, parcel of the ſaid laſt-mentioned farm, and to feed, browze upon, tread down, cut, conſume, and ſpoil the trees, germins, and ſhoots there then growing, by means and in conſequence of which ſaid ſeveral premiſes the ſaid L. T. became and was greatly injured in his reverſionary eſtate and intereſt of and in the ſaid farm, with the appurtenances: And whereas, &c. (ſame as the firſt Count to this mark ‡, then as follows), at which time the ſaid demiſe of the ſaid laſt-mentioned farm became and was ended and determined, duly ſurrendered and yielded up the ſame to the ſaid L. T. to wit, at the pariſh aforeſaid, and although according to the terms and conditions of the ſaid laſt-mentioned demiſe the ſaid Thomas, during the continuance thereof, ought not have felled, cut down, or deſtroyed any of the oaks, aſhes, elms, or pollards, or any of the young heirs, ſtemmers, or ſtandlings growing upon the ſaid laſt-mentioned farm, or to have lopped or topped the ſame or any or either of them, yet the ſaid Thomas, contriving and maliciouſly intending to aggrieve the ſaid L. T. in this behalf, and to injure him in his reverſionary eſtate and intereſt of and in the ſaid laſt-mentioned farm, with the appurtenances, whilſt he ſo held and occupied the ſame as aforeſaid, to wit, on the ſaid firſt day of January, in the year of Our Lord 1786 aforeſaid, and on divers other days and times between the ſaid day and the time of his ſurrendering the ſaid laſt-mentioned farm as aforeſaid, wrongfully and injuriouſly felled, cut down, and deſtroyed divers oaks, aſhes, elms, pollards, ſtemmers, and ſtandlings, to wit, five hundred oaks, &c. &c. at thoſe times reſpectively growing upon the ſaid laſt-mentioned farm, and of a large value, to wit, of the value in the whole of one hundred pounds of lawful, &c. wrongfully and injuriouſly lopped and topped, and cauſed and procured to be lopped and topped divers other oaks, &c. to wit, five hundred other oaks, &c at thoſe times reſpectively alſo growing upon the ſaid laſt-mentioned farm, and took and carried away the timber and wood, to wit, five hundred cart loads, and five hundred cart loads

2d Count, cutting timber.

wood coming off the ſaid ſeveral trees ſo felled, cut down, deſtroyed, lopped, and topped as laſt aforeſaid, being of a large value, to wit, of the value of one hundred pounds of like, &c. and converted and diſpoſed of the ſaid laſt-mentioned timber and wood to his own uſe; and although, according to the terms and conditions aforeſaid, it was incumbent on the ſaid Thomas, during the continuance of the ſaid laſt-mentioned demiſe, from time to time as occaſion required, at his own coſts and charges, to have well and ſufficiently repaired, amended, hedged, ditched, cleanſed, and ſcoured the ſaid meſſuage and buildings, and the hedges, ditches, fences, gates, bars, and poſts reſpectively belonging to the ſaid laſt-mentioned farm, in, by, and with all manner of needful and neceſſary reparations and amendments whatſoever, and ſo to have left and yielded up the ſame to the ſaid L. T. at the determination of ſuch demiſe, (the ſaid Thomas to be allowed rough timber by the aſſignment of the ſaid L. T.—and to take upon the ſaid laſt-mentioned farm ſufficient frith for the fences thereof), and although the ſaid Thomas could and might always, during the continuance of the demiſe of the ſaid laſt-mentioned farm, have taken ſufficient frith upon the ſame for repairing the fences thereof, and the ſaid L. T. was always, during the continuance of ſuch demiſe, ready and willing to have aſſigned to the ſaid Thomas ſufficient rough timber for the other repairs neceſſary to be done upon the ſaid laſt-mentioned farm, yet the ſaid Thomas, contriving and maliciouſly intending as aforeſaid, did not nor would from time to time as occaſion required, during the continuance of the ſaid laſt mentioned demiſe, repair, amend, hedge, ditch, cleanſe, and ſcour the ſaid meſſuage, buildings, hedges, ditches, fences, gates, bars, and poſts reſpectively belonging to the ſaid laſt-mentioned farm, but on the contrary thereof, the ſaid Thomas, whilſt he ſo held and occupied the ſaid laſt-mentioned farm as aforeſaid, to wit, on the ſaid firſt day of January, in the year of Our Lord 1786 aforeſaid, and from thence until the time of the ſurrendering the ſame as aforeſaid, wrongfully and injuriouſly permitted and ſuffered the ſaid laſt-mentioned meſſuage and buildings to be ruinous and in great decay in the reſpective walls, roofs, ceilings, joiſts, rafters, beams, timbers, floors, wainſcots, partitions, doors, windows, window-frames, pavements, and other parts and particulars thereof, and during the time laſt aforeſaid, wrongfully and injuriouſly permitted and ſuffered the hedges, fences, gates, bars, and poſts, to wit, two hundred perches of the hedges, two hundred perches of the fences, one hundred gates, one hundred bars, and one hundred poſts, belonging to the ſaid laſt mentioned farm to be proſtrate, ruinous, and fallen down, and the ditches, to wit, two hundred perches of the ditches belonging to the ſame, to be foul and choaked up for want of neceſſary repairing, amending, hedging, ditching, cleanſing, and ſcouring the ſaid laſt-mentioned meſſuage, buildings, hedges, ditches, fences, gates, bars, and poſts reſpectively, and by reaſon of the ſaid defects and want of reparations in the ſaid

hedges, fences, and gates, divers cattle, to wit, twelve horſes, twenty cows, and two hundred ſheep, during the continuance of the ſaid laſt-mentioned demiſe, eſcaped and ſtrayed into certain woods, parcel of the ſaid laſt-mentioned farm, and ate, browzed upon, trod down, conſumed, and ſpoiled the trees, germins, and ſhoots there then growing; by means and in conſequence of which ſaid ſeveral premiſes in this Count mentioned, the ſaid L. T. became and was greatly injured in his reverſionary eſtate and intereſt of and in ſaid laſt-mentioned farm, with the appurtenances: And whereas the ſaid L. T. afterwards, to wit, on the thirtieth day of September, A. D. 1789, at the pariſh aforeſaid, was lawfully poſſeſſed of the trees, goods, and chattels following, that is to ſay, five hundred oaks, five hundred aſhes, five hundred elms, five hundred other trees, five hundred cart loads of timber, five hundred cart loads of wood, five hundred cart loads of underwood, and five hundred cart loads of the loppings and toppings of trees, of a large value, to wit, of the value of one hundred pounds of lawful, &c. as of his own property; and being ſo thereof poſſeſſed, the ſaid L. T. afterwards, to wit, on the day and year laſt aforeſaid, at the pariſh aforeſaid, caſually loſt the ſaid trees, goods, and chattels out of his cuſtody and poſſeſſion, and the ſame afterwards, to wit, on the day and year laſt aforeſaid, came to the hands and poſſeſſion of the ſaid Thomas by finding; yet the ſaid Thomas, well knowing the ſaid trees, goods, and chattels to be the property of the ſaid L. T. and of right to belong and appertain to him, but contriving and wrongfully intending craftily and ſubtilly to defraud and injure the ſaid L. T. in this behalf, hath not, although often requeſted, delivered the ſame or any part thereof to the ſaid L. T. but on the contrary the ſaid Thomas afterwards, to wit, on the day and year laſt aforeſaid, at the pariſh aforeſaid, converted and diſpoſed thereof to his own uſe; to the damage of the ſaid L. T. of five hundred pounds; and therefore he brings his ſuit, &c. Pledges, &c. S. MARRYAT. 3d Count, trover, for trees cut.

And the ſaid Thomas, by Robert Blake his attorney, comes and defends the wrong and injury, when, &c. and ſays, that he is not guilty of the premiſes above laid to his charge, in manner and form as the ſaid L. T. hath above thereof complained againſt him; and of this he puts himſelf upon the country, &c. Plea, not guilty.

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For aſſerting that plaintiff, (who was retained by the managers of a theatre in the Haymarket, to compoſe muſic and perform as a muſician), had *expoſed* the muſic, by which means he loſt both his employments, - Mor. Pr. 309

Declaration in caſe for ſpeaking the following words of a member of parliament: " I expected to have met George Onſlow, but find he is not here, for which I

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am rather ſorry, as I came here with an intention to have told him my opinion of him, if he would have waived his privilege I would have waived my gown. I know him very well, I have carried letters from Mr. Onſlow to Mr. Wilkes, full of profeſſions of friendſhip and ſervice, *which were never kept*, nor indeed is it to be wondered at, ſince *it is notorious he never kept his word*, unleſs when his own intereſt was concerned. As to the inſtructing our members to obtain redreſs, I am totally againſt that plan, for *as to inſtructing Mr. Onſlow, we might as well inſtruct the winds*; and ſhould he even promiſe his aſſiſtance, I ſhould not expect him to give it us." 2d Count, "As to inſtructing our members to obtain redreſs, I am totally againſt that plan, *for as to inſtructing Mr. Onſlow, we might as well inſtruct the winds*, and ſhould he even promiſe his aſſiſtance, I would not expect him to give it us." Action will not lie for theſe words, vide, 2. Wilſ. Rep. 153 to 159

For ſlanderous words ſpoken of a *tradeſman*, charging plaintiff with theft. *Special damage* laid, - - - - 2. R. P. C. B. 149

Declaration for impoſing the crime of arſon upon plaintiff, and cauſing him to be examined before a juſtice of the peace: and for *words of felony*, charging plaintiff with *arſon*, whereby he loſt his inſurance, - - Mor. Pr. 261

For words of felony, - - - - - *Ibid.* 271

By an *innkeeper*, for *words*, *Welch* and *Engliſh*, charging plaintiff with *having foul diſeaſe*, by which means plaintiff was expelled a ſociety that allowed him five ſhillings per week during illneſs, and loſt many of his guests, &c. - *Ibid.* 274

For words of a woman, that ſhe had the French pox, whereby ſhe loſt her marriage, - - - - *Ibid.* 280

For words of *perjury* in an affidavit made by plaintiff, relating to defendant, who had given notice of his intention to become bail *for a woman* who ſtood indicted for a fraud, *Ibid.* 286

By one *ſurgeon* againſt another, the plaintiff *having ſet a bone*, the defendant ſaid *it was not well ſet*, and ſet it over again; alſo for defendant's intruding himſelf in the cure to plaintiff's prejudice, - - - - - *Ibid.* 290

For words of a *man-mid-wife*, - - - - *Ibid.* 295

For words of an *apothecary* degrading him in his buſineſs, - *Ibid.* 298

For words of *bankruptcy*, and publiſhing ſlander, alledging that plaintiff was a bankrupt, and ſpecial damages ſet out by a creditor of plaintiff's having arreſted him on that account, - - - - - - *Ibid* 301

Plaintiff being a *plumber*, and having made a leaden pump, defendant *wrote* theſe words: "This is Shock *Reed's* cobbled work." Plaintiff's name was *James* Reed; he therefore makes an averment that he was known as well by the name of *Shock* as of *James*, - - *Ibid.* 305

Declaration for ſcandalous words ſpoken of an *attorney*, charging him with perjury. Plea as to part, not guilty as to reſidue; a ſuit brought by the defendant, ſtating the declaration; firſt iſſue; ſecond iſſue; *venire* awarded; *niſi prius*;

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prius; trial; plaintiff produced as a witneſs, *gave falſe evidence*, - - - - - -	2. R. P. C. B. 153
For words, charging plaintiff with *robbery*, and for words of ſlander; with a Count for general ſlander, -	*Ibid.* 166
For ſaying of plaintiff, ſhe had a baſtard child, *whereby ſhe loſt her marriage*, - - - - -	Lill. Ent. 61
For words of *bankruptcy*, - - - -	*Ibid.* 73
For words ſpoken of a ſurveyor of the navy, *whereby* he loſt his place, - - - - - -	*Ibid.* 79
For telling a man he *cheated* him of fourteen gallons of wine, - - - - - -	Pl. Aſſ. 160
Declaration in C. B. againſt a juryman in a former ſuit, for charging a man with *perjury* in giving evidence therein, and the whole proceedings in that cauſe ſet out, -	*Ibid.* 170
Declaration for charging a woman with *murder* of her child, - - - - - -	*Ibid.* 195
Declaration in C. B. at the ſuit of an *attorney*, for defamation, in charging him with obtaining money to redeem his goods diſtrained for rent by *robbery* on the highway, and for words of *inſolvency*, want of ſkill, and integrity in his *profeſſion*, - - - - - -	*Ibid.* 170
Declaration for charging a man *with voting twice* at an election, and cauſing him to be ſuſpected of *perjury*, in which all the proceedings *from the writ to the poll* are ſet out, -	*Ibid.* 185
Declaration for calling an *attorney* a *forſworn* rogue, -	*Ibid.* 197
Declaration for words ſpoken againſt plaintiff's credit, *who was in trade*, telling him *he owed more than he was able to pay*, which brought his creditors upon him, and cauſing the perſon to whom the words were ſpoken to ſue him. 2d Count, for defaming him before a particular cuſtomer, -	*Ibid.* 199
Declaration for calling plaintiff a *ſodomite*, ſodomitiſh rogue, and ſodomitiſh dog, - - - - -	Pl. Aſſ. 202
For felonious words ſpoken of plaintiff, - -	*Ibid.* 205
For words of [redacted] - - -	*Ibid.* 238
For words of inſolvency and want of integrity, ſpoken of plaintiff *in his trade* of a *ſail-maker*; ſome of the Counts charge them as having been ſpoken before *divers* perſons, before *particular* perſons, plaintiff's *cuſtomers*; *per quod*, ſome refuſed to employ him, and others arreſted him, -	*Ibid.* 256
For words of *inſolvency* ſpoken of an *innkeeper*, - -	*Ibid.* 271
Bill in B. R. by an *attorney*, for words of *forgery*, -	*Ibid.* 292
For words of *felony* ſpoken of a *clergyman*. Plea and juſtification. Replication, that defendant ſpoke the words of *his own wrong*, without any ſuch cauſe, - -	Mod. Ent. 190
For ſcandalous words ſpoken of a virgin, *whereby ſhe loſt her marriage*, - - - - - -	*Ibid.* 172

Plaintiff, ſeiſed of a manor, and purpoſing to let the ſame, defendant ſaid, that plaintiff *had no right thereto*; *per quod*, one S. ſued out a private commiſſion reſpecting the premiſes, *Rob. Ent.* 14. 2. *Inſt. Cl.* 87.

Plaintiff, ſeiſed of lands which he had agreed to ſell E. and defendant ſaid, that plaintiff's

plaintiff's title thereto was not good; *per quod*, E. refuſed to perform the agreement, 1. *Brown's Ent.* 70.

For ſlandering plaintiff's title, whereupon there was an inquiſition for the king; *per quod*, plaintiff could not demiſe the manor, 2. *Mod. Intr.* 25. 2. *Inſt. Cl.* 90.

For *ſcan. mag.* 4. *Co.* 13. 2. *Brown's Ent.* 16. *Vidian's Ent.* 61. 63. 72. 74. *Cl. Man.* 160.

For *ſcan. mag.* of a duke, *Br. R.* 21. 2. *Inſtr.* 21. For words of *treaſon*, *Hanſ. Ent.* 29. *Cl. Aſſ.* 221. *Pl. Gen.* 17. 2. *Inſtr. Cl.* 27. For words of *murder* and *theft*, *Pl. Gen.* 37. *Read's Dec.* 129. 2. *Inſtr. Cl.* 29. 53. Of *witchcraft*, *Hanſ. Ent.* 28. *Cl. Man.* 163. *Cl. Aſſ.* 196. *Clif.* 106, 107, 108. 2. *Inſt. Cl.* 33.

Of *perjury*, 1. *Brown Ent.* 23. 63. *Bro. Va. Me.* 44. *Thomp. Ent.* 47. *Pl. Gen.* 27. *Cl. Aſſ.* 221. On a trial, 2. *Mod. Intr.* 18. *Rob. Ent.* 94. *Clif.* 102. 2. *Inſt. Cl.* 61. 63.

For words of *theft*, *Ra. Ent.* 12. *Upp.* 118. 2. *Brown. Ent.* 26. *Bro. Va. Me.* 46. 2. *Mod. Int.* 22. *Rob. Ent.* 70. *Hanſ. Ent.* 16. 27, 28. *Thomp. Ent.* 72. *Re. Dec.* 103. 136. *Cl. Aſſ.* 195. 2. *Inſt. Cl.* 44. 49. 55. For words of *rape*, *Hanſ.* 57. 2. *Inſt. Cl.* 36. 2. *Brown*, 19. Of *adultery*, *Ibid.* 18. Of *forgery*, *Thomp. Ent.* 53. *Br. R.* 72. 2. *Mod. Intr.* 20. 2. *Inſt. Cl.* 66. Of barretry, *Thomp.* 57. Of *counterfeiting* the coin, *Ibid.* 54. For words of fraud, *Ibid.* 45. *Clif.* 111, 112, 116. *Hanſ. Ent.* 15. *Cl. Man.* 154. *Re Dec.* 100. For words of *ſorcery*, 2. *Mod. Intr.* 24. 2. *Inſtr. Cl.* 53. 58. For *defamatory words* in Welſh, *Her.* 129. 1. *Bro. Ent.* 77. *Mod. Intr.* 7. Words of *French diſeaſe*, with an averment of their ſignification, 2. *Brown. Ent.* 6. *Mo. Intr.* 26. 2. *Inſtr. Cl.* 82.

For words ſpoken to a riotous aſſembly, that plaintiff's houſe was a *bawdy-houſe*; *per quod*, houſe and goods were damaged, *Vidian's Ent.* 44.

Of *perjury*, where plaintiff ſued defendant for a debt in the county court, where plaintiff waged his law, and thereupon defendant ſaid he was perjured, *Her.* 211. *Rob. Ent.* 45. For words of *burning barley*, 2. *Inſtr. Cl.* 42.

By an officer in an office of great truſt, for words of *deceit* in his *office*, *Winch. Ent.* 70.

For ſaying, *that plaintiff adviſed and abetted tenants to pull down* hedges, where ſeveral perſons had committed routs and riots in pulling down hedges, and defendant was examined before juſtices of the common pleas and at the aſſizes concerning the aſſiſting, &c. *Rob. Ent.* 79. *Br. R.* 19. 2. *Inſtr. Cl.* 70. By a member of parliament, for ſaying he was a papiſt and penſioner, 2. *Went. Rep.* 263. By juſtice of peace for words of *deceit*, *Thomp. Ent.* 40. *Mod. Intr.* 30. For words of *forgery*, *Thomp. Ent.* 48. Words imputing *injuſtice* to plaintiff, *Reb. Entr.* 65. By one of the auditors, for charging him with *deceit in taking fees*, &c. *Winch. Ent.* 70.

By a counſellor at law, for writing and publiſhing a ſcandalous libel againſt plaintiff, directed to his client, 2. *Brown. Ent.* 22. 1. *Sand. Rep.* 120.

For words of ſubornation of *perjury*, *Thomp. Ent.* 53. For words of *maintenance* and *champerty*, *Hanſ. Ent.* 61. *Cl. Man.* 166. For words of perjury, *Re. Dec.* 119. By a *doctor of phyſic*, *that he killed five people in bleeding them* 1. *Brown. Ent.* 21.

By a *jurgon*, for words, that he was a wanderer *(vagrantis)* and runner about *(perfugacionis)*, 2. *Brown Ent.* 11. By rector, words of *fornication* and *incontinence*, 1. *Brown. Ent.* 22.; and for words of *ſimony*, *Thomp. Ent.* 50. Similar, for words of *bawdry*, *Br. R.* 70. By clerk in orders, for words *by way of report*, 1. *Brown. Ent.* 77.; and for words of *ſodomy*, 2. *Inſt. Cl.* 37. Words of *perjury*, *Re. Dec.* 123. Of theft, 1. *Sand. Rep.* 241.

By an *attorney* in C. B. for words, hat he was *falſe and a double dealer*, took fees *both ſides*, 1. *Brown. Ent.* 24. *Cl. Man.* 156.

For words of *incapacity* and *unfitneſs*, &c. *Thomp. Ent.* 50. 2. *Mod. Intr.* 27. For words of *forgery*, 1. *Brown. Ent.* 65. 79. *Pl. Gen.* 25. 32. 35. For words of *knavery*

very and *theft*, 1. *Brown. Ent.* 79. *Hanf. Ent.* 29. For words of *knavery and perjury*, 2. *Brown. Ent.* 19. *Br. R.* 70. Of *perjury*, *Clif.* 104. Of *bribery*, *Pl. Gen.* 30. By clerk of prothonotary, for words of theft, *Br. R.* 51. By an *attorney*, for ſcandalous words written in exceptions in chancery, *Ibid.* 72. By an unmarried woman, *that ſhe had a baſtard*, 1. *Brown. Ent.* 49. *Cl. Man.* 168. *Re. Dec.* 103. 110. *Cl. Aſſ.* 207. 2. *Inſt. Cl.* 78. For words of *incontinence* of an unmarried woman; *per quod*, ſhe loſt her marriage, *Thomp. Ent.* 45. *Rob. Entr.* 106. *Bro. Va. Me.* 47. 2. *Mod. Entr.* 29. For ſame words of a *widow*, 1. *Brown. Ent.* 62.

By a *widow*, for words of *inhability*, *Hanf. Ent.* 11.

By a *batchelor*, for ſcandal; *per quod*, he loſt his marriage, *Thomp. Ent.* 57. By *a tradeſman* in London, *that he was in Newgate for a felony, and would be hang*, 1. *Brown. Ent.* 23.

Similar, for words that he kept a *falſe book* in his ſhop, *Rob. Entr.* 46. By a merchant, *that he was a bankrupt*, 1. *Brown. Ent.* 63. 2. *Mod. Intr.* 34. 2. *Brown. Ent.* 23. 2. *Inſt. Cl.* 77. Similar by a *mercer*, *Rob. Ent.* 77. *Thomp.* 51, 52. 56. *Mod. Intr.* 1. *Cl Aſſ.* 198. By a brewer, ſimilar, *Brown. Meth. No.* 35. *By a tayler*, for words of *deceit*, 1. *Brown. Ent.* 54. Similar by a *mercer*, 1. *Brown. Ent.* 78. Similar by an *innkeeper*, *Hanf. Ent.* 15. By a maltſter, for words of *incapacity*, 2. *Brown* 15. *Br. R.* 83. Similar by a *merchant*, *Ibid.* 81. 2. *Brown. Ent.* 23. Similar by a clothworker in London, 2. *Inſt. Cl.* 74. By ſon and heir, for words of *baſtard*, *Thomp. Ent.* 58. *Re. Dec.* 127. *Mod. Intr.* 26. 2. *Inſtr. Cl.* 93. Similar by daughter and heireſs, 2. *Brown. Ent.* 19. *Hanf. Ent.* 26.

By *ſub-collector of taxes*, *that he altered* the figures in the book of aſſeſſment, *Br. R.* For a *falſe* [illegible] written and publiſhed, *Br. R.* 72. 2. *Inſt. Cl.* 24. 90. 99.

By a goldſmith, for printing and publiſhing ſcandalous libel in the Poſt Boy; *per quod*, loſt his marriage, *Brown's Meth.* No. 3.

By a *brewer*, for words imputing to him unwholeſome mixture, &c. *Re. Dec.* 121. By brewer, *he is a beggarly rogue, and not worth a groat*, *Clif.* 109.

WORDS ATTENDED WITH SPECIAL DAMAGE—DEFAMATION OF TITLE—PERSON IN A PROFESSION—TRADE—CALLING—BUSINESS.

By ſon and heir, for words of *baſtardy*, *Co. Ent.* 28. *Her.* 111.; and to diſinherit plaintiff of copyhold tenements, and hinder him from having adminiſtration of goods committed to him, *Co. Ent.* 29.

Plaintiff, ſeiſed of lands by feoffment, whereof he would ſell part, and defendant *ſaid* that *he* had an eſtate thereof by deed, *Upp.* 116.

Plaintiff, ſeiſed of a manor, of which in one hundred acres plaintiff had right of warren, and was diſpoſed to ſell part, and defendant *ſaid* one J. had a third part of the premiſes, *Upp.* 235.

T. ſeiſed of a manor of an annual value, and clear of incumbrances, ſold to plaintiff, who in a converſation with L. on the part of R. about the ſale, and defendant *ſaid*, the *title* was defective, and that another had title, in whoſe name defendant entered into the manor, *Ra. Entr* 594.

Plaintiff, ſeiſed of lands for his life and life of others, which he bargained to M. and defendant *ſaid words*, for which M. refuſed to go on with his agreement, 3. *Br.* 112.

Plaintiff, ſeiſed in right of his wife of a manor and advowſon by feoffment of R. who, by reaſon of the feoffment, was ſeiſed of other lands of which, &c. by the names of all the lands, &c. enfeoffed K. and others; and defendant ſays, that R.

by reaſon of the laſt feoffment, was ſeiſed of the manor and advowſon that paſſed by the general words of the deed to K. and others; *per quod*, plaintiff was hindered of the propoſed exchange, *Ra. Ent.* 494.
By an attorney of C. B. for words of *theft of a robe*, *Co. Ent.* 23.
By an attorney, for words, *that he was ſtruck off the roll, and thrown over the bar*, *Her.* 106. Of knavery, *Her.* 137. Falſity, *Ibid.* 111. Coſenage, *Her.* 104. 127. 129. *Aſh.* 18.
By *rector*, for words of witchcraft, *Her.* 222. By vicar, for words of *perjury* and *theft*, *Her.* 113.
By a *doctor of laws*, commiſſary, and juſtice of peace, for words; verdict on not guilty, and judgment for plaintiff, 2. *Lut.* 1288.
By herald at arms, for words of perjury, 1. *Br.* 259.
For words of *perjury*, ſpoken of one who was witneſs on a trial at the aſſizes; verdict on not guilty, and judgment for plaintiff, 2. *Lut.* 1292.
By a *virgin*, that ſhe was pregnant; *per quod*, ſhe loſt her marriage, *Her.* 110. *Aſh.* 20.
For words of a virgin; *per quod*, &c. after verdict for plaintiff judgment was arreſted, for that it was not alledged with whom, &c. 2. *Lut.* 1295.
By a *batchelor*, for ſcandalous words; *per quod*, he loſt his marriage.
By ſon and heir, for words of *baſtardy*, *Aſh.* 66.
By a perſon of a ſound mind, for words of *lunacy*, where he was found a lunatic by an inquiſition, which was afterwards traverſed, 1. *Br.* 211.
For words of a candidate at an election, whereby he loſt his election, 2. *Lut.* 1293.
By an *innholder*, for words of *cheating*, *Aſh.* 21.
By an *apothecary*, words *poiſoning*, *Aſh.* 52.
By *maſter of ſhip*, words, *incapacity*, *Aſh.* 51. *Clothworker*, *Ibid.* 55.
By *mercer*, that he was a bankrupt, *Her.* 108. 158. Butcher and grazier, *Her.* 109. *Tradeſman* keeping falſe weights, *Her.* 111. Shopkeeper, *Ibid.* 212.
For ſpeaking ſcandalous words by way of *queſtion*, *Her.* 109.
Words ſpoken at different times, *Co. Ent.* 23. 1. *Br.* 262.
Words *different*, ſpoken at the ſame time, *Her.* 113.
By juſtices of the peace, &c. where divers malefactors broke and threw down hedges, &c. and defendant was examined on a charge of aiding them, and thereupon defendant *ſaid*, that plaintiff gave advice to tenants, &c. concerning proſtrating the hedges, *Her.* 159.
By juſtice of peace, for words of *bribery*, 3. *Br.* 113. *Her.* 114. Of injuſtice, *Her.* 253.
By late mayor and ſheriffs of London, for words of *extortion*, *Upp.* 242.
By counſellor at law, for words of *falſity* in his counſel, *Co. Ent.* 22. Of perjury, *Co. Ent.* 26. *Her.* 111. Words of perjury ſpoken of a counſellor at law, ſurveyor of the king's lands, juſtice of peace, and twice elected knight of the ſhire in parliament, *Co. Ent.* 21.

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Plea, that plaintiff ſtruck M. T. of which ſhe died, *Mo. Int.* 136.

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Plea to declaration for words of *theft* and *burglary*, that defendant's houſe on a certain day was burglariouſly entered by malefactors, and that plaintiff was one of them who broke in; *per quod*, defendant ſpoke the words, *Tho.* 72. 3. *Inſt. Cl.* 229.

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Plea, that defendant ſpoke other words; and traverſes the words ſpoken as laid, 1. *Bro.* 21. 46. 2. *Bro.* 27. *Ro. Ent*, 94. *Pl. Gen.* 31. 36. *Mo. Int.* 45. *Br. R.* 98. *Re. Dec.* 114. 3. *Inſt. Cl.* 253. Replication and iſſue, 254, 255. *Clif.* 118. *Cl. Aſſ* 114. *Co. Ent.* 25. 29.
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Plea, juſtification, exhibiting a petition to the magiſtrates of *the bad life* of plaintiff, *Ro. Ent.* 74. Demurrer, 3. *Inſt. Cl.* 216.
Juſtification, exhibiting petition to the committee for grievances, 3. *Inſt. Cl.* 218. Demurrer.
Juſtification; ſpecial demurrer, *and notes*, *Ro. Ent.* 71.
Plea to declaration for words of *theft*, that plaintiff feloniouſly took a little pig; *per quod*, defendant ſpoke the words, *Br. R.* 99. Goods ſtolen, *Mo. Int.* 44. 47. *non. cul.*
Plea, becauſe of the common voice of the country. Replication, *de injuria*, 3. *Inſt. Cl.* 231.
Plea, juſtification for charging plaintiff with felony, becauſe he had ſtolen plate, 3. *Inſt. Cl.* 224. Replication, *de injuriâ*, &c. and iſſue.
Plea, juſtification, for that plaintiff ſtole his ſheep, 3. *Inſt. Cl.* 227. Replication, *non cul.*; and iſſue.
Juſtification that the cup was found upon plaintiff. Replication, that he falſely, &c. ſpoke, and traverſe. Rejoinder, and iſſue, 3. *Inſtr. Cl.* 227.
Juſtification, plaintiff ſtole a horſe. Replication, *de injuria*, &c. 3. *Inſt. Cl.* 229.
Plea to words of *murder*, that plaintiff undertook to adminiſter medicine to a ſick perſon, who, in conſequence of it, died; *per quod*, he ſpoke the words, *Tho.* 69. *Mo. Int.* 135. 3. *Inſt. Cl.* 223.
Plea to words of *perjury*, that plaintiff was perjured as a witneſs at *niſi prius*. Replication, *de injuriâ*, &c. *Aſht.* 21. *Tho.* 65. 3. *Inſt. Cl.* 234. 237.
Like plea, as a witneſs at the ſeſſions. Like replication, *Br. R.* 60. Like plea upon *interrogatories* in chancery, *Pl. Gen.* 27. Like plea in an *anſwer* in chancery, *Clif.* 103. Before the king in council. Replication, *de injuriâ*, &c. *Pl. Gen.* 28.
Juſtification, words of *perjury*: plaintiff ſworn at court-leet, revealed the ſecrets of the jury, *Bro. Vad.* 118.
Plea, that plaintiff *forſwore* himſelf in an iſſue concerning the limits of the pariſh, 2. *Mo. Ent.* 134.
Plea, that plaintiff ſold wares by *falſe weights*. Replication, *de injuriâ*, &c. 3. *Inſt. Cl.* 232.
Plea, that *plaintiff owed defendant the money* demanded. Replication, *de injuriâ*, 3. *Inſt. Cl.* 233.
Juſtification, for that defendant was on the inqueſt by which the plaintiff was indicted. Replication, *nul tiel record*. Rejoinder, *quod habetur*, 3. *Inſtr. Cl.*

Plea to ſlander of *title;* defendant ſhews a covenant and uſes, and ſo juſtifies. 3. *Inſtr. Cl.* 239.

Plea, words of *ſcan. mag.* that he *ſpoke other words* of the cauſe in the plea; and traverſes that he ſpoke the words in the declaration, *Ra. Ent* 593.

Plea, that plaintiff was accounted a lunatic by an inquiſition, afterwards traverſed; *per quod*, plaintiff ſaid, "Thou waſt a lunatic;" and traverſes that he ſaid, "Thou *art*" a lunatic, 1. *Br.* 112.

Plea, words of *theft*, that plaintiff ſtole ſheaves of beans in the cloſe; *per quod*, he ſaid the words, *Her.* 112. Of lambs, for which plaintiff was indicted. Repli. cation, *de injuriâ*, *Her.* 220.

Plea to words of murder, that plaintiff murdered his wife, *Her.* 240.

Plea as to words, except the words of *perjury*, *non cul.*; and as to thoſe that plaintiff committed perjury in depoſition in the Star Chamber. Replication, *de injuriâ*, *Co. Ent.* 26.

Plea to words of *ſubornation of perjury*; *prior action* for like words againſt defendant, who juſtified; and verdict and judgment was for defendant, *Her.* 151.

Plea to words of an attorney, that plaintiff was preſented by the oath of the attorney for *mal-practice*, and afterwards ſtruck off the roll; *per quod*, he ſpoke the words. Replication, *de injuriâ*, &c.; and traverſes being ſtruck off the roll. Demurrer, *Ra. Ent.* 107.

Plea, that defendant exhibited a bill in the Star Chamber againſt W. for keeping plaintiff and other *murderers* in his houſe; and traverſes that he ſpoke the words in any other way. Demurrer, *Co. Ent.* 23.

Plea to exhibiting a falſe petition to juſtices of peace againſt plaintiff, that petition was true, and he and others ſubſcribed their names, and placed the common ſeal of the town. Demurrer, *Her.* 155.

Plea, that *by agreement* he gave a ring to plaintiff in *ſatisfaction*. Replication, *nul tiel* agreement, *Co. Ent.* 48.

4. MALICIOUS PROSECUTION.—(*See* Infra.)

1. Civil Suits.
 1. Maliciouſly holding to Bail,
 2. —— Suing out Commiſſion of Bankrupt,
 3. —— Detaining in Cuſtody,
 4. —— Habeas Corpus,
 5. Extent in Aid—*See* Index.

 } (3

2. Criminal Charges.

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310. Declaration in C. B. againſt defendant, who had ſued out a writ of *latitat* againſt plaintiff, and before the return of that writ had likewiſe ſued out a *bill of Middleſex*, and arreſted plaintiff upon the ſame; plaintiff paid the defendant, and procured his diſcharge; defendant afterwards arreſted plaintiff by virtue of the *latitat*, and thereby put plaintiff to great expence.

31[illegible] Declaration in B. R. for maliciouſly ſuing out a *commiſſion of bankruptcy* againſt plaintiff, who was a fair

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mer, which was afterwards ſuperſeded; *per quod*, plaintiff was turned out of his farm, and his ſtock ſold at an under value, and he entirely ruined.

119. Declaration in B. R. for ſuing a writ out of the marſhalſea court maliciouſly, and *arreſting* plaintiff.

141. Declaration for maliciouſly cauſing plaintiff to be *arreſted* after payment of the debt, by virtue of a writ which had been ſued out previous to ſuch payment.

124. Declaration in B. R. for malicious proſecution of an *extent in aid* againſt defendant and another; *per quod*, A. arreſts him, B. *detains* him in cuſtody, and C. ſeizes his goods.

128. Declaration in B. R. for maliciouſly *arreſting and holding plaintiff to bail* for eleven pounds and upwards, where nothing was due from him to defendant, who diſcontinued the ſuit.

130. Declaration in B. R for *maliciouſly ſuing out an execution* upon a judgment entered up by a warrant of attorney given for that purpoſe, to ſecure the payment of a ſum of money by inſtalments after the firſt inſtalment was paid, and before the ſecond became due; with ſpecial damage.

136. Declaration in B. R. for maliciouſly holding to bail and falſe impriſoment, by *procuring a detainer* againſt *plaintiff when in cuſtody* at the ſuit of defendant, whereby thoſe who would have bailed him refuſed.

[illegible]laration in B. R. for *ſuing out a habeas corpus* directed to plaintiff, a *ſchoolmaſter*, to bring up the body of an infant under his tuition before the lord chief [illegible]ice, and thereby putting him to great expence.

2. Criminal Charges. (4).

[illegible]on—Bigamy—Felony—Forcible Entry—Perjury—Before [illegible]trate—Commiſſioners of Exciſe—Preferring Indictments.

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136. Declaration for taking plaintiff up for *arſon*, carrying him before a juſtice of the peace, whereby plaintiff loſt his inſurance.

136. Declaration for charging plaintiff with *arſon*.

136. Declaration in B. R. for ſtopping and advertiſing ſilver plates which plaintiff offered for ſale to defendant, and impoſing the crime of *felony* on the plaintiff.

14. Declaration in B. R. for maliciouſly accuſing plaintiff of *felony*, and carrying him before a juſtice of the peace, who committed him for re-examination, and on ſuch re-examination committed him for trial; and

after-

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afterwards at the general quarter ſeſſions *preferred an indictment* to the grand jury, who returned the ſame *not found*. Counts for impoſing felony and larceny.

348. Declaration in B. R. for accuſing plaintiff of *felony*, taking him up, carrying him before a magiſtrate, who committed him, *indicting him at the ſeſſions*, on which indictment, upon trial at the Old Bailey, plaintiff was acquitted.

350. Declaration in C. B. for maliciouſly exhibiting an information againſt plaintiff before *commiſſioners of exciſe*.

352. Declaration in B. R. for maliciouſly charging plaintiff with having ſtolen a quantity of hay, and cauſing him to be apprehended and to give bail for his appearance at the quarter-ſeſſions, and for *preferring a bill of indictment* againſt plaintiff, which jury returned *not found*.

322. Declaration in B. R. for maliciouſly charging plaintiff with *bigamy* before a juſtice of the peace, cauſing the juſtice to make out a warrant for apprehending plaintiff, and alſo another warrant for his commitment, and *preferring a bill* at the quarter ſeſſions returned *not found*.

355. Declaration in B. R. for a malicious proſecution for a *forcible entry*, on which plaintiff was indicted and apprehended, and afterwards acquitted by a jury.

356. Declaration in B. R. for maliciouſly indicting plaintiff (an attorney) of *perjury*, in an affidavit made by him in ſupport of his bill againſt one A. B. (againſt whom he had brought an action for the recovery of it), which, by rule of B. R. was referred to the maſter to be taxed, and the indictment removed by *certiorari* into B. R. where, upon trial, he was acquitted.

Declaration for *ſplitting one* cauſe of action into *eleven* actions, and *arreſting* plaintiff on each in an inferior court, - Mor. Pr. 400

For maliciouſly cauſing plaintiff to be arreſted in the marſhalſea court, when after appearance plaintiff did not declare, - - - - - *Ibid.* 402

By an *attorney* in C. B. for cauſing a perſon to file a bill in chancery againſt him *without any reaſonable cauſe*, - *Ibid.* 405

For maliciouſly *ſuing out a commiſſion of bankruptcy* againſt plaintiff, - - - - - *Ibid.* 406

For maliciouſly *indicting* plaintiff for felony, - - *Ibid.* 410

For maliciouſly *obtaining a juſtices warrant* againſt plaintiff, and taking him up for not obeying an order of baſtardy, which order the plaintiff had obeyed, - - *Ibid.* 413

For accuſing plaintiff of felony, *carrying him before a juſtice*, who committed him, preferring a bill of indictment, which was returned *ignoramus*; - - - - *Ibid.* 415

By an *attorney* of B. R. againſt defendant, for maliciouſly cauſing two people to give *information before a juſtice*, that

plaintiff

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plaintiff had ſhot a deer in Enfield Chace, and proſecuting the ſame before the *juſtice*, who acquitted plaintiff; by ſuch proſecution plaintiff was put to expence and trouble in performing journies, &c. - - - Mor. Pr. 419

For ſuing the plaintiff maliciouſly *in an inferior court*, which had no juriſdiction of the cauſe, - - - 1. Wilf. Rep. 302 b.

For malicious proſecution on an indictment, - - *Ibid.* 310. b.

For falſely and maliciouſly ſuing out a commiſſion of bankruptcy, which was afterwards ſuperſeded, - - *Ibid.* 145 b.

For indicting plaintiff's wife, a malicious proſecution, - 2. R. Pr. C. B. 158

Bill by an *attorney* of B. R. againſt an *attorney* of C. B. for cauſing plaintiff to be arreſted, contrary to his privilege, &c. on a *capias ad reſpondendum* at defendant's ſuit, - *Ibid.* 171

Declaration in tort againſt a practiſer, for *ſuing out a writ* againſt the plaintiff in the name of C. K. without C. K.'s conſent, - - - - - *Ibid.* 179

For maliciouſly *holding plaintiff to bail* in the mayor's court of London for the pretended damage of one thouſand pounds, and afterwards diſcontinuing his ſuit, - Lill. Ent. 15

For maliciouſly holding plaintiff to bail in the mayor's court of Maidſtone, without any cauſe of action, - - *Ibid.* 23

For *maliciouſly arreſting plaintiff* in the ſheriff's court of London, where the cauſe was afterwards removed into B. R. and the plaintiff nonſuited for not declaring, - - *Ibid.* 35

Declaration in marſhalſea court for *indicting plaintiff for a riot*, which was returned *ignoramus*, - - *Ibid.* 62

For a malicious indictment at the ſeſſions, - - Pl. Aſſ. 159

Declaration for arreſting and holding defendant to ſpecial bail, in a caſe where no ſpecial bail required by the courſe of the court, - - - - - 1. Ld. Raym. 503

For maliciouſly cauſing the plaintiff *to be impriſoned* and indicted for a felony, - - - - Mod. Ent. 160

Declaration in the exchequer, for maliciouſly charging plaintiff with diſobedience of orders as captain of a ſhip of war, for laying him under an arreſt, and confining him an unreaſonable time without bringing him to a court martial, and afterwards bringing him to a court martial, at which he was honourably acquitted. Plea, general iſſue. This action will not lie, vide, - - - - 1. T. R. 493

Tort, for maliciouſly ſuing in palace court at Weſtminſter, - - - - - Com. Rep. 190

Declaration againſt *man and his wife* by an *infant* by *her next friend*, on a malicious indictment *at the aſſizes* for felony, on which plaintiff was bailed out of priſon on commitment. 2d Count, for impoſing the crime of felony generally, and indicting upon it. 3d Count, for impoſing the crime of felony only, - - - - - Pl. Aſſ. 160

Declaration againſt defendant, for a malicious proſecution *at the aſſizes*, for charging plaintiff with robbing him on the highway, of which indictment plaintiff was acquitted, *Ibid.* 166

For a malicious indictment, charging plaintiff with *ſtealing* pigs which he bought of defendant. 2d Count, for impoſing

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posing the crime of *felony* upon him, and afterwards indicting him at one assizes, whereof he was acquitted at another. 3d Count, differing from the former, -	Pl. Ass. 108
Declaration in B. R. for a malicious prosecution at the quarter sessions of the peace, for an assault, of which plaintiff was acquitted, - - - - -	*Ibid.* 222
Declaration for indicting plaintiff for *stealing* three pigs which he bought of defendant, - - - -	*Ibid.* 262
Declaration in B. R. for obliging plaintiff to *put in excessive bail* to two actions in C. B. where he had paid the greatest part of the sum; recites how indebted and how paid, -	*Ibid.* 277
For maliciously and falsely procuring a man to be indicted for a riot. Plea, not guilty, - - - - -	1. Ld. Raym. 374
For arresting defendant, and *holding him to bail* on mesne process, when no bail was required by law, - - -	*Ibid.* 505
For maliciously holding to bail for forty pounds, when sum due was under ten pounds, - - - -	Mod. Ent. 191

Malicious Prosecution under all preceding Heads.

For malicious prosecution, and taking plaintiff upon a writ of *ca. sa.* in the name of another without any warrant, *Br. R.* 47. (*See* Torts by and against Attornies for Malicious Prosecution.)

For arresting plaintiff in the city court without any cause of action, 1. *Brn. Ent.* 36. Similar, where the court had no jurisdiction, &c. *Clif.* 35. Similar, according to the custom of the realm, *Ibid.* 35. Similar, for detaining plaintiff in prison till he found bail, *Br. R.* 61. *Clif.* 34. Similar, on process out of B. R. *Brown's M. N.* 25. Similar, on a writ out of C. B. and process out of an inferior court at the suit of defendant, without any cause of action, *Thom. Ent.* 72. Similar, on a caption out of C. B. and also of a bill at suit of defendant, *Br. R.* 50. For malicious prosecution in court of principality of Wales, *Reb. Ent.* 16.

For attaching plaintiff by his goods in inferior court at the suit of R. without R.'s consent, *Hanf. Ent.* 53.

By an *attorney* against defendant, who impleaded him before commissioners concerning ecclesiastical causes and undue exercise of his office of an attorney, *Cl. Ass.* 255. Similar, for suing him in court christian without cause, *Clif.* 34. For that defendant caused plaintiff, by scandalous reports, to be arrested in London, *Cl. Ass.* 213. For that defendant maliciously sued out a writ of *ca. sa.* in the name of another, without any warrant, *Br. R.* 47. For pronouncing plaintiff to be excommunicated without any reasonable cause, *Clif.* 33.

For charging plaintiff with a *felony*, taking him before a magistrate, and detaining till he found bail to appear at the next sessions, where he was discharged by proclamation, *Rob. Entr.* 339. *Vidian's Ent.* 145.

By a king's messenger, for a false and scandalous petition exhibited against him to the justices at sessions, and by them sent to the king's privy council, *Rob. Ent.* 72.

For a doctor of laws and official principal to the bishop of L. for a false and scandalous petition preferred to a committee in parliament, *Vidian's Ent.* 36. For printing and publishing a petition, 1. *Sand. Rep.* 120.

By an attorney, for false articles exhibited against him in chancery, whereupon, on

the oath of defendant, a writ iſſued out of B. R. for good behaviour, defendant was thereupon arreſted, *Rob. Ent.* 75.

For felony, charged before a magiſtrate at Weſtminſter, 1. *Brown's Ent.* 76.

By a counſellor at law, for a ſcandalous libel, 2. *Bro.* 22.

For an information for perjury in B. R. *Cliff.* 25. For an information againſt plaintiff, for riotouſly aſſembling with others, and unlawfully beating defendant, &c. *Ibid.* 27.

For charging plaintiff with a felony, and procuring him to be indicted upon defendant's oath, to which plaintiff pleaded, and was acquitted, *Thomp. Ent.* 43.

Similar, by an *attorney*, *Wi. Ent.* 74. *Br. R.* 22. Similar, for being the acceſſary to a felony. *Thomp. Ent.* 35. For charging plaintiff with felony, and indicting him in Middleſex, 1. *Brown. Ent.* 3 *Re. Dec.* 105. 138. *Clif.* 29. Similar, at the aſſizes, and no bill found, 2. *Brown. Ent.* 17.

For preferring an indictment of felony againſt plaintiff at the general ſeſſions, and holding him to bail to appear at aſſizes, and there acquitted of the felony, *Winch. Ent.* 74.

For conſpiring with others, cauſing plaintiff to be taken for felony, indicting at the aſſizes defendant's oath, and no bill found, *Ibid.* 74. *Bro. Va. Me.* 42; and *plea* thereto. Similar, for charging with a robbery, *Rob. Ent.* 68. 2. *Mod. Int.* 100.

For taking plaintiff before a magiſtrate on a charge of robbery, detaining him till he found bail for his appearance at the aſſizes, where a bill was preferred, and acquitted on the trial, *Hanſ. Ent.* 30.

For exhibiting falſe bills againſt plaintiff of *falſely enrolling pleas* in C. B. and procuring plaintiff to be often examined thereupon, *Ra. Ent.* 13.

For a ſcandalous *libel* againſt plaintiff fixed on the door of the church, *Ra. Ent.* 13.

By a king's meſſenger, for falſe and ſcandalous petition againſt him exhibited to juſtices at ſeſſions, *Her.* 153.

By an *attorney*, for exhibiting falſe articles againſt him in chancery, whereon, on the oath of defendant, a writ *de bona geſtura* iſſued, and plaintiff was arreſted thereon, *Her.* 157.

Againſt abettors in appeal, *Ra. Ent.* 43.

Indictment for words ſpoken by plaintiff when drunk, and plaintiff acquitted at the ſeſſions, *Co. Ent.* 25.

Indictment and impriſonment of plaintiff for *theft*, at the ſeſſions of which he was acquitted at a ſpecial ſeſſions, 1. *Br.* 207.

For charging plaintiff with a *felony*, and procuring him to be indicted, to which plaintiff pleaded, and was acquitted on trial, 3. *Br.* 109.

For charging plaintiff, *felony* and indictment, 27. H. 8. 11. in Middleſex, *Aſh.* 26.

For taking plaintiff before a juſtice of peace, charging him with *robbery*; recognizance for appearance at the aſſizes, indictment and *ignoramus* by grand jury, *Her.* 96.

For *conſpiring*, and cauſing plaintiff to be apprehended for a *robbery*; indictment at the aſſizes, and *ignoramus*, *Her.* 147.

By an attorney indicted of *perjury*, and acquitted on trial, *Aſh.* 24.

On an indictment for *barretry*, *Her.* 88. 226.

Againſt two defendants, who cauſed plaintiff to be indicted for barretry in London, whereof he was acquitted at the Newgate ſeſſions, *Upp.* 31.

For impriſoning and indicting plaintiff at ſpecial ſeſſions before the preſident of the ſeſſions in Wales for a *theft*, of which he was acquitted, *Rob. Ent.* 341. *Br. R.* 25. Similar, at aſſizes, and bill thrown out, *Hanſ. Ent.* 24. 53. For ſtealing cattle, and indictment, at aſſizes of which plaintiff was acquitted, *Thomp. Ent.* 36.

By a clergyman againſt three, who cauſed plaintiff to be apprehended for a *rape*, holding him to bail for his appearance at ſeſſions, and after at aſſizes; bill preferred and thrown out, *Winch. Ent.* 96. Similar, at aſſizes only, *Pl. Gen.* 48.

Similar, for an aſſault, with intent to commit a rape upon defendant's wife, *Clif.*

Clif. 28. For indicting for *barratry* at ſeſſions, 1. *Brown.* 18. *Br. R.* 20. Againſt three, who cauſed plaintiff to be indicted for barratry in London, of which he was acquitted at the Old Bailey, *Rob. Entr.* 340. Similar, for procuring plaintiff to be indicted for a *forgery*, *Br. R.* 22. By a clergyman, indicted by plaintiff at ſeſſions for *ſodomy*; bill preferred, and not found, 2. *Brown. Ent.* 21.

Indictment for a *conſpiracy* at aſſizes, *Ibid.* 24. For indicting on three indictments; firſt, for unlawfully and riotouſly ſtopping up a way; ſecond, for unlawfully and forcibly entering into lands; third, for a treſpaſs, and unlawfully and wrongfully cutting fences, &c. *Clif.* 24. For indicting plaintiff for ſhutting up a common way, *Ibid.* 31. For indicting plaintiff for an aſſault and affray, and bill thrown out, *Ibid.* 32.

For *charging plaintiff with a felony*, taking him before a juſtice of peace, and a further examination before juſtices at ſeſſions, *Hut.* 71.

For *words of theft*, by reaſon of which plaintiff was arreſted on ſuſpicion, by order of juſtices in London, and detained until bail found to appear at next ſeſſions, where he was diſcharged on proclamation. *Ra. Ent.* 12.

PLEAS---MALICIOUS SUITS.

Plea to declaration for exhibiting a ſcandalous petition to a committee in parliament, proteſting, &c. Pleads, that defendant cauſed the writing to be written, *in form of a petition*, and delivered to the committee by the commons in parliament appointed, *according to the uſual mode*, and for the approbation of the members of the committee; with an averment, &c. Demurrer, and judgment for defendant, 1. *San.* 124.

Plea by two defendants, *non. cul.* others plead, that *they went to aſſiſt* the conſtable to take plaintiff before a juſtice of peace, and that he bound him over to proſecute plaintiff the next ſeſſions, and to give evidence. Replication, *de injuria ſua*, and iſſue, *Vid.* 145.

Plea, not guilty, to preferring a bill of indictment for felony, *Wi. Ent.* 96.

Non. cul. by two of three defendants and attorney for the third, confeſſes judgment for the third by *non eſt informatus*, *Wi Ent.* 98.

Plea of *autre foits acquit* at the grand ſeſſions in Wales, to an indictment of murder at the aſſizes in the county of Hereford, and pleads over to the felony and murder not guilty, *Vid.* 207.

Plea to declaration for charging with a rape, againſt three by one not guilty, by the other juſtification. Demurrer, *Pl. Gen.* 50.

Plea, that defendant loſt the goods, and ſuſpecting plaintiff to have ſtolen them, gave notice to the conſtable and others, who, upon ſearching, found goods in plaintiff's poſſeſſion, on which conſtable took her before a magiſtrate, who, upon examination, committed plaintiff to goal, and took defendant's recognizance to proſecute, who cauſed the bill to be preferred, and that other defendants come to give evidence that the goods belonged to defendant. Replication, *de injuria*, &c. and iſſue, *Wi. Ent.* 107. *Wi. Rep.* 73. 3. *Br.* 110.

Plea, that he indicted plaintiff by order of the magiſtrate, 2. *Bro.* 14.

II. TORTS to PERSONAL PROPERTY.

(For NEGLIGENCE, NONFEASANCE, and MISFEASANCE, *vide.*)

1. By Exceſſive Diſtreſs (4).
2. Immoderate Uſe of Horſes, Cattle, and Goods lent and let to Hire (5).
3. Keeping Dogs, and other Noxious Animals, accuſtomed to bite Mankind, &c. (6).
4. Reſcue, and *pound breach*, and not releaſing Goods when replevied (7).
5. TROVER (8).

Other Injuries to Perſonal Property not claſſed, and Conſequences of Public Nuiſances. *See poſt.*

1. By Exceſſive Diſtreſs (4).

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439. Declaration in B. R. againſt defendant, for making an unreaſonable diſtreſs on the plaintiff's goods.
441. Declaration in B. R. againſt defendant, for ſelling and appraiſing ſtanding corn after having diſtrained it for rent in arrear, contrary to 11. Geo. 2. c. 9. (*See* Actions on Statutes.) 2d Count, for exceſſive diſtreſs.
443. Declaration in B. R. for diſtraining beaſts of the plough for rent, although there were other property on the premiſes liable to diſtreſs, whereby plaintiff was prevented from tilling his land. 2d Count, for an exceſſive diſtreſs. Plea, licence from plaintiff, and iſſue.
445. By tenant againſt landlord, for *diſtraining* when no rent was due, to recover double the value of the goods diſtrained on the ſtatute William and Mary, c. 5. ſ. 5. (*See* Actions on Statutes.)
429. Declaration in B. R. by tenant againſt landlord, for diſtraining beaſts of the plough and ſheep, although there were ſufficient goods and chattels on the premiſes.

2. Immoderate Uſe of Horſes, &c. (5).

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435. Declaration in B. R. for *riding* a hired mare farther than agreed for, and ſo *immoderately* as to ſtrain her fore legs.

Declaration

	PRECEDENTS in BOOKS of PRACTICE, REPORTERS, &c.
Declaration in tort, for exceſſive working the plaintiff's mare,	Mod. Ent. 127
For taking away and riding plaintiff's gelding in ſuch manner that the beaſt was much damnified, - -	*Ibid.* 148

For horſe let to hire, ſo immoderately uſed, that he died, *Reg.* 6. *Aſh.* 49.
For a mare delivered to defendant to till the lands for two days, ſo exceſſively worked that ſhe died, *Her.* 100. 189.
For a gelding delivered to defendant to ride, ſo heavily burdened, and going ſo faſt, that he died, *Her.* 101.
For immoderate riding a horſe lent, and trover, and converſion of a gelding, &c. Plea, not guilty within ſix years. Replication, that he ſued out an original in treſpaſs, *quare clauſum fregit*, &c. and that defendant is guilty within ſix years before, &c. Rejoinder, that the original was proſecuted with intent to declare in debt for ſeven pounds; and traverſe that it was proſecuted with intent in the replication. Demurrer, and judgment for defendant, for that plaintiff concludes to the country, 1. *Lut.* 98.

3. Keeping Dogs and other Noxious Animals accuſtomed to bite Mankind (6).

VOL. VIII. *Page*	PRECEDENTS in BOOKS of PRACTICE, REPORTERS, &c.
437. Declaration in B. R. againſt defendant, for keeping a dog *he knew* to be accuſtomed to bite mankind, and which bit plaintiff, and very much injured him; *per quod*, &c.	
581. Declaration in B. R. againſt defendant, who kept two rams which he knew to be vicious, for ſuffering them to wander about, and which ſaid rams broke into plaintiff's cloſe, and fought with and killed plaintiff's ram.	
Declaration for keeping a boar, which run againſt plaintiff's mare and wounded her, - - -	Mor. Pr. 442
For keeping a dog accuſtomed to bite people, which bit plaintiff's wife, - - - -	*Ibid.* 443
Declaration for keeping a dog that worried plaintiff's ſheep, *Lill. Ent.* 29. - - - -	2. R. P. C. B. 173
For keeping a dog accuſtomed to bite ſheep, which dog bit plaintiff's ſheep, whereby ſome of them died, - -	Pl. Aſſ. 103
Declaration for keeping a dog accuſtomed to bite mankind, which bit plaintiff's apprentice, whereby he loſt his ſervice for a long time, and laid out money in the cure, -	*Ibid.* 117

Plaintiff bitten by defendant's dog, accuſtomed to bite. Plea, *non ſcienter*, 1. *Bro.* 29. 2. *Inſt. Cl.* 197.
For ſheep bitten by defendant's dog accuſtomed to bite; that great part died, and reſidue were much hurt, *Ro. Ent.* 77. *Br. R.* 43.
For a horſe bitten, ſo that he died, *Ro. Ent.* 20. *Her.* 149. A boar bitten, *Br. R.* 43.
For a cow accuſtomed to ſtrike, by which plaintiff was dangerouſly wounded, *Bro.* 40.
For ſtriking pigs by a *bear*, accuſtomed to ſtrike animals, *Br. R.* 73.

For a wound given to plaintiff by a ſavage bull of defendants. Count bad, for not ſtating that the defendant *ſcient*, &c. 1. *Lut.* 90.
Plea (to declaration by a perſon bit by a dog) *non ſcienter*, that the dog was *accuſtomed to bite*, 1. *Bro.* 29.

4. RESCUE (7).
1. Of Diſtreſſes for Rent.
Damage Feaſant.
2. Of Priſoners.

Vol. VIII. Page		Precedents *in* Books *of* Practice, Reporters, &c.
432.	Declaration in B. R. for *reſcuing* one A. B. who was indebted to the plaintiff, and was in the cuſtody of the bailiff.	
	Declaration for reſcue of *one who was arreſted* at plaintiff's ſuit,	1. Mod. Ent. 138
	For reſcue of a cow *diſtrained for rents*, *Her.* 647 to 649, -	*Ibid.* 210
	Declaration, ſtating that plaintiff would have diſtrained five hogs, damage feaſant, and would have impounded one only, but defendant, with four others, *reſcued* ſaid four hogs, and broke the pound, and from thence took *the hog diſtrained*. Plea thereto by one defendant, not guilty by ſecond, not guilty as to breaking the pound, and iſſue, and as to taking all the five hogs, he pleads that the ſaid five acres in which, &c. are his freehold, wherefore he took them from the plaintiff, which is the ſame, &c. Replication, that plaintiff was ſeiſed in fee as of *locus in quo*, called, &c.; and traverſes that they were taken in home marſh. Rejoinder to the *new aſſigned place*, in replication, and that defendant *tendered ſufficient amends*. General demurrer and joinder, - - -	*Ibid.* 211, 212
	Declaration in C. B. for reſcuing a horſe diſtrained, damage feaſant, which plaintiff's ſervant was taking to pound,	1. Clerk's Eng. Tut. 134
	Declaration in C. B, by three *executrixes* and their *huſbands* againſt a *gaoler* of a hundred court for a reſcue *of a priſoner* in execution, in which all the proceedings are ſet out in the original action *on a promiſſory note* made to the plaintiffs as executrixes. 2d Count, omitting all the proceedings previous to the judgment, and ſtating that generally,	Pl. Aſſ. 84. 90
	Declaration for reſcue and pound breach on a diſtreſs by deviſee for life of a freehold rent, - - -	Lill. Ent. 377
	Declaration in an action on the ſtatute 2. W. and Ma. for reſcuing a *diſtreſs for rent* under a demiſe, -	3. Ld. Raym. N. Ed. 177
	For reſcuing a *diſtreſs for rent*, - - -	Mod. Ent. 2 0
	Againſt a *reſcuer*, on a *non omittas ca. ſa. Her.* 68.	
	For *reſcue* of a perſon taken on a *latitat* at plaintiff's ſuit, 1. *Br.* 255. 3. *Br.* 90.	
	Plea, not guilty, *Br. R.* 48. *Ro. Ent.* 13.	
	Againſt defendant, who reſcued goods *diſtrained* for rent arrear, *Rob. Ent.* 12.	
	Similar, a *bullock* taken as a *relief*, *Br. R.* 42.	
	For the reſcue of a perſon taken on a *latitat* at the ſuit of plaintiff, *Br. R.* 48, 49. 1. *Br.* 255. 3. *Br.* 90. *Mod. Intr.* 23. Similar, taken on a *capias* in debt, *Hanſ. Ent.* 32. *Aſh.* 59. 3. *Br.* 42.	
	On a *capias utlegatum Her.* 241. *Rob. Ent.* 21. On a bill of Middleſex upon a recognizance entered into before chief juſtice of C. B. *Hanſ. Ent.* 47. On a writ of rebellion in chancery for the execution of a decree, *Hanſ. Ent.* 8.	
	Againſt defendant, who, together with others, reſcued ſheep taken, *damage feaſant*, *Br. R.* 9.	

5. TROVER.

5. TROVER (8).

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372.	Declaration in B. R. in trover, for *goods* and chattels.	
372.	Declaration in B. R. in trover for a bill of exchange accepted by defendant.	
373.	Trover for a *bond*—for a *draft* on a banker—and for *fish*.	
373.	Declaration in B. R. in trover at the suit of *assignee of a bankrupt*. 1st Count, for trover and conversion in time of *bankrupt*. 2d, in time of *assignee*.	
374.	Declaration in C. B. in trover, for *a lease*, at the suit of *the assignee* of *lessee*.	
375.	Declaration in B. R. in trover, for *American certificates*, against an *attorney*.	
376.	Declaration in B. R. in trover against *assignees of a bankrupt*, to recover *monies, notes, and bills*, which were remitted to bankrupt to take up bankrupt's acceptances for plaintiff, which he did not do, but therewith satisfied [illegible] creditors, then committed an act of bankruptcy, and the *identical* monies were seized under the commission.	
377.	Declaration in B. R. in trover, for goods, by *assignee of a bankrupt*.	
378.	Declaration in trover in B. R. at the suit of a *husband and wife administratrix*, during the minority of an infant; with an averment, that infant is yet a minor under twenty-one years.	
392.	Count in trover for a gelding.	
393.	Count in trover for a gun.	
	Declaration in trover by assignees of a *bankrupt*, for a ship and her furniture, - - - -	Mor. Pr. 453
	Plaintiff claiming a right to cut and take rushes on a common, having cut five or six loads, which defendant takes and carries away, and jointly convert to their own use. Plea, not guilty, - - - -	2. Wilf. Rep. 338
	Declaration in trover in C. B. - - -	1. R. P. C. B. 134
	Trover by assignees of *bankrupt's* effects on their own possession, - - - - -	2. R. P. C. B. 160
	Trover for money, - - - -	*Ibid.* 161
	Trover against *husband and wife*, for trover by wife *whilst sole*,	*Ibid.* 162
	Declaration in trover by *husband and wife, administratrix de bonis non* of a former administrator, for a mortgage deed and other goods conversion laid in the plaintiff's own time. Three Counts, - - - -	Lill. Ent. 70
	Declaration in B. R. in trover for broad cloth. Plea, submission to an award by plaintiff and defendant pending the suit, and a final award thereon, and performed on defendant's part. Replication, taking issue on the award. Submission. Performance, - - - -	*Ibid.* 507, 508
	Declaration in trover for building materials, - -	*Ibid.* 509
	Trover for silk waistcoat. Plea, confesses conversion, but pleads that defendants did discharge and acquit him in consideration of a promise made by him to pay plaintiff twenty pounds, - - - - -	3. Ld. Raym. N. Ed. 116

PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.

Trover in B. R. by a ſurvivor of three joint merchants, for a ſhip and other goods. Plea, that they were joint merchants, and ſo there ought to be no ſurvivorſhip, that one of the merchants made a will, and an *executor*, who proved it, and is ſtill living, and that the other deceaſed merchant made a will, and an executor, who proved, and is ſtill living, - - - - - - 1. Ld. Raym. 662

Trover by *executor*, for cattle loſt in the lifetime of teſtator, - Mod. Ent. 121

Trover by an *adminiſtrator*, - - - - *Ibid.* 178

Trover for an anchor, ſails, and three cables, - - 3. Ld. Raym. 138

Tort againſt a common carrier by land; with a count in trover for a box containing one hundred guineas, - - 1. Ld. Raym. 58

Trover for tin, foreign coined money of India currency, - Lill. Ent. 496

Trover for cattle, goods, and chattels, - - 3. Ld. Raym. 75

* Declarations in Trover. (*See* Addenda to Index.)

Trover for a waiſtcoat, that he was poſſeſſed of a waiſtcoat, and that he loſt the goods and chattels aforeſaid. Plea, confeſſes the converſion, but pleads that plaintiff had exonerated and acquitted him in conſideration of a promiſe made to pay plaintiff twenty ſhillings. Demurrer, for that it was not averred the twenty ſhillings was paid before action brought, and held good, 2. *Lut.* 1537.

Plea to trover for ſhip and goods, that defendant, as captain of a man of war, took the ſhip, &c. as prize trading to parts beyond the ſeas, contrary to royal prohibition. Demurrer, *Br. R.* 69.

Plea to trover by *executor*, for a gold chain; to part, *non. cul.* to reſidue, that defendant, as wife of *teſtator*, had them in teſtator's life-time for ornament, &c; and avers, *that plaintiff had ſufficient to pay* debts beyond the chains. Replication, maintaining the declaration, and traverſe that the goods of teſtator beyond the chains were ſufficient to pay, &c. *Ro. Ent.* 81. *Her.* 244.

Plea to trover, for cattle, a cuſtom of the city of London, that *live* cattle bought or ſold by a *ſtranger* out of the Smithfield market before nine of the morning, were forfeited to the mayor, &c. That plaintiff ſold two bullocks, which defendants ſeized as forfeited; and traverſes the converſion at *W. Ten.* 380.

Plea to trover for goods, that plaintiff demiſed to defendant a cottage, with the goods, and it was agreed between the parties that defendant might uſe the goods for a term, and at the end deliver or pay plaintiff a reaſonable price to be valued by W. who appraiſed them at five pounds, which defendant tendered. Demurrer, *Wi. Ent.* 51.

Plea to trover for a gelding, that plaintiff gave authority to T. to ſell the gelding, who agreed with defendant that he ſhould try him, and if he was not ſound, or did not pleaſe defendant, then to be re-delivered to T.; that defendant found the gelding unſound, and re-delivered him to T.; with averment, *that the gelding was in as good condition*, &c. Replication, maintaining declaration, and traverſes agreement, 1. *Bro.* 355. 3. *Inſt. Cl.* 298.

Plea to trover for ninety ſheep loſt. *Judgment in treſpaſs recovered* in the ſame court for the ſame cauſe, and damages aſſeſſed at twopence. Replication, that twopence were not aſſeſſed for the value or converſion of the ſheep, but for taking and chaſing them; and traverſes that the taking and chaſing in that action could be a converſion. Special demurrer, *Wi. Ent.* 99. 1. *Cro. Lacon's Caſe*, *Wi. Ent.* 62.

* Omitted by miſtake.

Plea

Plea to trover for a horſe; juſtifies the converſion by the cuſtom of England as an *innkeeper* for his *feed*, 3. *Inſt. Cl.* 300. *Ro. Ent.* 26. *Her.* 162.

Plea to trover and converſion of plaintiff's goods by waterman, that goods were ſunk and loſt by tempeſts, *Ro. Ent.* 300. *Br. R.* 101.

Plea to trover for two oxen, that they come into defendant's manor as an *eſtray*, and one died of a diſeaſe, and he proclaimed the other on two market-days. Replication, that one died by being overworked, and converted the other; and traverſes the proclamation made, *Co. Ent.* 40.

Plea to trover for ſilver bowl that was pledged to him by plaintiff for forty ſhillings, with intereſt, *Her.* 177.

Plea to trover by *adminiſtrater*, that adminiſtration was firſt committed to defendant, who took the goods and diſpoſed of them for the payment of debts and funeral of deceaſed. Replication, that plaintiff cauſed defendant to be cited in the court chriſtian, to make void letters of adminiſtration which were revoked and committed to plaintiff, and defendant ſold the goods *pendente lite*; and traverſes that he diſpoſed of the money about the payment of debts and funeral expences. Demurrer, *Co. Ent.* 38.

Plea, that he diſtrained goods in a houſe for rent unpaid, on a demiſe thereof to plaintiff, who requeſted goods diſtrained to be delivered to him, which defendant refuſed unleſs he paid the rent; and traverſe that he is otherwiſe not guilty, 3. *Br.* 483.

Plea to trover for wood, that the king being ſeiſed of woods, &c. granted to defendant in tail, who cut trees, and *gave colour*. Replication, that plaintiff, ſeiſed of other woods were trees grew; and traverſe that they grow in defendant's wood, *Co. Ent.* 41.

Plea to trover, for goods converted and ſold, that he did not ſell the goods, &c. *Dy.* 121. 1. *And.* 20.

Plea to trover, for a hawk that he found in lieu in his dove-houſe, and delivered him to theriff, not knowing that he belonged to plaintiff, *Her.* 104.

Plea, that he bought the goods in an open ſhop in London. Replication, maintaining declaration, and that defendant delivered the goods to one R. who *per fraudem* between him, and defendant ſold goods to defendant, with intent to defraud plaintiff. Rejoinder, maintaining bar; and traverſes fraud, and iſſue, *Wi. Ent.* 109. 3. *Inſt. Cl.* 289.

Plea to trover for a boat, that the admiral of England, by letters-patent, had all *wrecks* on the ſhores of the ſea or rivers within the flux and reflux of the ſea, and J. an officer of the court, took the boat floating on the river Thames, and ſold her to plaintiff. Replication, that within the year and day after ſeizure he claimed the boat; iſſue on the claim, *Ro. Ent.* 445.

Plea, that defendant affirmed his plaint in debt in the court at Weſtminſter againſt plaintiff, and ſummons and attachment thereon awarded to the bailiff of the court, who attached the goods, and plaintiff at the next court making default, the goods were forfeited to the lord; *per quod*, the bailiff took them and delivered them to defendant for ſafe cuſtody until, &c.; and traverſes that plaintiff was poſſeſſed of the goods for a day and a year in the declaration ſpecified, *Ro. Ent.* 447.

Plea to declaration by *executor* of executor, that defendant, ſeiſed of meſſuages, demiſed to teſtator for a year, rendering rent, and for rent arrear, took the goods as a diſtreſs. Replication, maintaining declaration, and iſſue, *Ro. Ent.* 450.

Plea, that plaintiff acknowledged a ſtatute ſtaple to defendant for two hundred pounds, who thereupon ſued out his writ of *extendi facias*, that he delivered to the theriff, who by virtue thereof ſeized plaintiff's goods, and delivered them to defendant in part ſatisfaction of the debt, *Ro. Ent.* 451.

Plea to trover by a ſurviving merchant, that they were joint merchants, and no ſurvivorſhip, and that one of the deceaſed made a will, and left an executor, who proved it and is living, and ſo of the other, to which the plaintiff demurred, *Lex. Ent.* 20.

Plea, that plaintiff ſold the goods to him at London, *Bro. Vad.* 120.
Plea, that plaintiff licenſed a ſtranger to pawn the goods for money lent, *2. Mo. Int.* 149 *Tro. Tro.* 158.
Plea, that plaintiff delivered the horſe to B. to ſell for him, and that he ſold him to defendant upon a price if he pleaſed him, and gave him leave to try him by riding three miles, *Tro. Tro.* 177.
Plea to trover for an anvil that defendant, as bailiff of the court baron of E. and by virtue of a *levari* did levy and take the plaintiff's anvil, had it appraiſed, and ſold it for twenty-ſix ſhillings, and gave the money to B. *who had recovered* the ſame againſt the plaintiff in the ſaid court in an action on the caſe, *Tro. Tro.* 181.

Conſequences of Public Nuiſances (19) and (25) *poſt.*

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428. Declaration in B. R. againſt defendant for throwing rubbiſh in the ſtreet, whereby plaintiff's wife and ſon were turned over in a cart, and wounded.

III. TORTS OF A MIXED NATURE,

1. DECEIT, and on a Warranty (10.)

See NEGLIGENCE, NONFEASANCE, and MISFEASANCE, *poſt.*

Vol. VIII. *Page.* — PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.
365. Declaration in B. R. for *deceit*, in ſelling ſpirituous liquors *by ſhort meaſure.*
366. For *deceit, and on a warranty* in *exchange of horſes*, and money paid by plaintiff.
366. Declaration in B. R. *in not delivering the proper meaſure* of coals.
367. Declaration in B. R. for *deceit in the exchange* of one *horſe for another* and money, defendant knowing his *to be unſound*, and plaintiff's horſe and money being a valuable conſideration for a ſound horſe.
368. Declaration in B. R. for deceit in ſelling plaintiff *unſound ſheep*, part of which died, and others ſick.
369. Declaration in B. R. for deceit in ſelling wool *artfully packed.*
370. Declaration in B. R. for *deceit*, at the ſuit of merchants againſt their *factor*, for *not delivering* them gum which he had purchaſed for them, but *withholding ſame under falſe pretences, ſelling ſame*, and *converting of the extra price.*
Declaration on exchange of two of plaintiff's oxen for defendant's mare and one guinea, - - - Mor. Pr. 255
For ſelling bad wool for fleece wool, with bad wool in the midſt of it mixed, - - - - - *Ibid.* 267
On a warranty of a mare to be ſound, when ſhe was lame. Seven Counts. Plea, not guilty, - - 2. Wilſ. Rep. 40

For

	PRECEDENTS in BOOKS of PRACTICE, REPORTERS, &c.
For selling an unsound horse, warranting him to be sound,	2. R. P. C. B. 665
Declaration for falsely affirming that a third person was fit to be trusted, whereby plaintiff was induced to sell him goods on credit, when in fact the person was unable to pay for them,	3. T. R. 51
For making bricks in a manner so unworkmanlike, that they were of no use to plaintiff,	Mo. Ent. 140
For selling a gelding to plaintiff, knowing it to be the property of another,	*Ibid.* 141
For playing with false dice,	*Ibid.* 164
Count in a declaration in nature of a writ of deceit on a false affirmation,	4. T. R. 31
For deceit in falsely asserting premises to be let at a greater yearly rent than they really were. Plea, not guilty,	2. Ld. Raym. 1118

By brewer against maltster, for selling bad malt, *Ass.* 36.
For selling wax, and delivering part mixed with rosin, &c. *Dy.* 75.
Against a goldsmith, who sold a sapphire for a diamond, *Her.* 102.
Against a butcher, who sold meat by *false weights.*
For making a *warrant* to plaintiff by false name of baptism, *Her.* 222.
Playing with plaintiff with *false dice, Ce. Ent.* 8. *F. N. Br.* 95. *Reg.* 290. *Upp.* 333.
Against the late servant of the vicar deceased, for selling to plaintiff wool for tithes, whereof the plaintiff was afterwards charged to the bishop having the vacancy, *Ra. Ent.* 592.
For suing out a writ in the name of the plaintiff, who was ignorant of it, *Reg.* 112. Similar writ in *quare impedit*, whereon there was a *non. pros.* by which his clerk was *removed*, *Reg.* 112.
For acknowledging a statute merchant for defendant in plaintiff's name, whereon he was afterwards taken, *Reg.* 112. 114.
By prior, for counterfeiting the common seal of presentation to the vicarage, *Reg.* 112. Of resignation of vicarage, *Reg.* 114. By another, *Reg.* 116.

AGAINST ATTORNIES. (*See Post.*)

Plaintiff obtained judgment against defendant in assize, for that defendant had nothing in the county, caused the record thereof to be sent into B. R. to have execution; and defendant, under colour of prosecuting an attaint, procured the record to be sent into chancery, by which the execution is delayed, *Reg.* 113.
Plaintiff sued out a writ of lands against defendant, who pleaded a fine. Replication, misnomer, and defendant on the *dies datus procured a person* unknown to come in the name of plaintiff, and confess defendant's plea, *Reg.* 113.
Plaintiff brought a writ of a plea of lands against defendant, who, on the *dies datus, prayed delay under a false colour*, when defendant was then in England, *Reg.* 113. 116. 20. 11. 6. 10. *Ra. Ent.* 492. *Vet. Int.* 81.
Against master and servant, for *procuring* the servant to be recorded for plaintiff's attorney in a plea of land prosecuted by master against him, whereon an essoin was cast, *Reg.* 67.
Defendant, for procuring a person unknown to come into court and call himself by plaintiff's name, and make defendant an attorney in trespass, and defendant was absent at the time of taking the jury; *per quod*, forty pounds were recovered for damages against plaintiff, *Reg.* 113.

R

For procuring an attorney to be made for plaintiff without his notice in a plea of land, by whoſe default plaintiff loſt his land, *Reg.* 114.

WARRANTY, &c.

For ſelling cows warranted to be perfect, and with calf, where one cow was barren, and the other cow had only three teats, 1. *Bro.* 15.
For ſelling woollen yarn warranted good to make cloth, 1. *Bro.* 15. And for ſkins warranted, *Clif.* 934. Sheep warranted ſound, 1. *Bro.* 30. Oxen, *Cl. Mar.* 111.
For ſelling the cow of another warranted to be his own, *Tho.* 40. Unſound cow warranted ſound, *Tho.* 40. *Cl. Man.* 148. *Of virvicibus*, *Tho.* 40. Cheeſe and butter warranted good, *Clif.* 935. Roots of *Infulorum* warranted, *Clif.* 935. Of a hired horſe, that he would be fit for his journey, when he was unfit, 1. *Bro.* 38. Not guilty pleaded, *Ro. Ent.* 58. *Her.* 163.
For ſelling the horſe of another warranted to be his own horſe, was afterwards taken by the owner, *Clif.* 933. *Aſh* 35.
For warranting an unſound horſe to be ſound, *Vid.* 10. *Pl. Gen.* 18. *Ra. Ent.* 9. *Vet. Int.* 19. *Reg* 103. *Her.* 223. 2. *Cro.* 630. An unſound gelding, *Han.* 84. For warranting a gelding diſeaſed with the ſcab, *Tho.* 30. With the glanders, 2. *Mo. Int.* 89. Selling a horſe for a chaldron of coals, *Clif.* 936.
For ſelling unwholeſome wine warranted fit to drink, and for deceitfully detaining other wine beyond the time fixed on, *Clif.* 938.
For ſelling woollen cloth warranted to contain ſo much in meaſure, *Tho.* 34. For paper warranted good, entire, and not torn, *Br. R.* 18.
For rotten timber warranted good and fit for ſhip-building, *Br. R.* 80.
For that fraudulently ſold a horſe foundered, warranting him ſound, *Clif.* 932. Three Counts.
For warranting a blind horſe ſound in his eyes and limbs, *Reg.* 108.
For ſelling unſound oxen warranting them ſound, *Upp.* 231. Sheep, *Her.* 102. 224. A hawk, *Upp.* 230. Of malt ſtinking, warranted good, *Ra. Ent.* 9. *Reg.* 111. *Upp.* 245. Stinking fiſh, *Reg.* 96. *Her.* 102. 229.
For ſelling a caſk of wine warranted good, when it was ſour, corrupt, and unwholeſome, *Her.* 92. Butt of wine warranted fit and wholeſome, 9. H. 6. 53.
Woollen cloth not well fulled, 9. H. 6. 53.
Sacks woollen, warranted to contain ſo much, *Dig.* 179. 13. H. 4. 1.
Plea, did not warrant, *Ra. Ent.* 9. *Vet. Int.* 9. With proteſtation, *Upp.* 231. That he warranted the horſe free from every *known* fault; and traverſes warranting generally.
For the cow of another ſold to plaintiff, 1. *Bro.* 25. Horſe of another, *Her.* 102. 224. *Aſh.* 35. For the horſe of another which defendant exchanged for plaintiff's horſe, and defendant *pretended* the horſe was his own, *Clif.* 72. *Her.* 77.
For wool bought by plaintiff of defendant, and ſold to another, *Pl. Gen.* 14. 19. *Ro. Ent.* 29. Where defendant made a bond to plaintiff by a falſe name of baptiſm, 1. *Bro.* 27. For procuring perſons unknown to plaintiff to be bound for one W. in falſe names, by which W. was permitted to eſcape, and plaintiff loſt his debt, 1. *Bro.* 52. For maliciouſly procuring plaintiff to be outlawed in B. R. and taken thereupon, 1. *Bro.* 87.
Againſt a butcher, who ſold tallow by falſe weight, *Han.* 32.
Againſt defendant, for ſelling grain by falſe meaſure, *Tho.* 25.
For ſelling ſtinking fiſh, *Cl. Aſſ.* 215.
Againſt a foreigner, who procured the eſcape of plaintiff's priſoner taken in rebellion in Ireland againſt plaintiff's will, *Ro. Ent.* 89. For a falſe preſentment by jurors of the manor court, by means whereof another was fraudulently admitted, and plaintiff loſt the benefit of his purchaſe, *Br. R.* 17. For pretending that he (defendant) was the perſon to whom a legacy was bequeathed, and receiving it, whereas he was not the legatee, *Cl. Aſſ.* 219.

India

India Company againſt a company of merchants trading in London, by an act for levying a ſum not exceeding two millions, the ſaid company of merchants falſely *and maliciouſly* claimed divers goods imported which were forfeited, by which the company trading to the Indies loſt three parts of their forfeitures, *Clif.* 55.

Deceit in the ſale of barley warranted fit to ſow, &c. and delivering barley and hay burnt, *Clif.* 937.

2. Adultery, and ſeducing and harbouring
1. Men's Wives.
2. Daughters.
3. Apprentices
4. Journeymen } Enticing, &c. (11)

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418.	Declaration in B. R. for enticing away and harbouring plaintiff's *wife*.	
	Declaration for taking and detaining plaintiff's *wife*,	1. R. Pr. B. R. 486
	For carnally knowing plaintiff's *wife*,	*Ibid.* 488
	Declaration in B. R. for breaking and entering plaintiff's houſe at divers days, &c. and *debauching his daughter*; *per quod, ſervitium amiſit*,	Pl. Aſſ. 501.
	Declaration in caſe, for ſeducing and harbouring plaintiff's *apprentice*,	1. R. Pr. C. B. 483
	Declaration for enticing away plaintiff's ſervant; *per quod, ſervitium amiſit*,	Lill. Ent. 72
	Declaration for enticing a ſervant away from the plaintiff, and receiving her into his ſervice,	Mod. Ent. 122

3. Apprentices—Journeymen.

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380.	Declaration in B. R. for not delivering up an articled *ſervant*.
422.	Declaration in B. R. for *enticing journeymen* "paper manufacturers" to conſpire to ſtrike for an advance of wages.
438.	Declaration in B. R. againſt defendant, for enticing away plaintiff's apprentice.

For detaining apprentice from ſervice of his maſter, *Tho.* 33. *Vid.* 86.

For retaining a ſervant to ſerve plaintiff, who falſified a bill, and delivered a falſe bill, went out at night, and waſted plaintiff's money and goods in taverns, *Vid.* 82.

For

For retaining a ſervant for plaintiff as a ſhepherd for the year, who left his ſervice within the year; *per quod*, plaintiff loſt ten ſheep, *Br. R.* 35.

4. Exerciſing Trades and excluſive Privileges.

Vol. VII. Page		Precedents *in* Books *of* Practice, Reporters, &c.
431.	For uſing a cement or compoſition which had been granted to plaintiff by letters-patent, without plaintiff's leave.	
	Declaration at the ſuit of Stationer's Company of London, for *printing almanacks* without their conſent as patentee, -	Lill. Ent. 63
	Declaration at the ſuit of the dippers of Tunbridge Wells, for exerciſing the *buſineſs of a dipper*, not being duly appointed and approved according to the ſtatute, - -	2. Wilſ. 414

5. Imitating and Piating Inventions—Copyrights.

Vol. VIII. Page		Precedents *in* Books *of* Practice, Reporters, &c.
420.	Declaration in B. R. by *printer* of a certain edition of the Bible, to which there were many ſubſcribers, and defendant (who was employed by plaintiff to diſtribute the work) in order to hinder the ſale of the work, cauſed a number of hand-bills to be diſtributed among the ſubſcribers, informing them, that the work would never be completed, whereby a number of them withdrew their ſubſcriptions.	
434.	Declaration in B. R. for engraving and publiſhing a mezzotinto print copied from the original engraved by plaintiff.	
	Declaration by plaintiff, owner of a copyright of the book called the Pilgrim's Progreſs, *for printing and ſelling ſame without plaintiff's licence*, Mod. Ent. 129, - -	Lill. Ent. 67
	For printing, &c. *Thomſon's Seaſons*, - -	4. Burr. 2305

3. AGAINST SHERIFFS AND THEIR BAILIFFS, &c. AND OTHERS.

For 1. ESCAPE.
2. FALSE RETURNS.
3. Taking insufficient Bail. Pledges in Replevin, and refusing Bail, contrary to the Statute, and for selling Goods taken in Execution after Debt satisfied, and for Extortion, &c. } (12).

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482. Declaration in B. R. against a *marshalsea court officer*, for an *escape* and *false return* of his writ of *capias*.

484. Declaration in B. R. against the marshal of the marshalsea, for *suffering* a prisoner to *escape* who was originally in prison at the suit of another, but detained at plaintiff's suit.

486. Declaration in B. R. against the *sheriff*, for an *escape* and *false return* of a *latitat*, and *neglecting to arrest*.

490. Record in B. R. in an action against a *surviving sheriff*, for the *escape* of a person who was in custody on a *capias ad respondendum*, and after his escape died insolvent. Judgment by default. Award of inquisition.

491. Return. Final judgment. Mercy, &c.

492. Declaration against a *bailiff of liberty of the Tower* for *escape* of a prisoner under a *capias ad respondendum* issuing out of the court of the Tower and liberty thereof.

495. Declaration against a *sheriff* for false return of a *fieri facias*, stating seizure and levy of goods sufficient, but had not money before, &c. at return, &c. and *false*

496. *return*. 2d Count, although he seized goods, &c. to the value of eighteen pounds, and might have sold for their real value, yet he only levied five pounds five shillings and sixpence, and no more. 3d, Sei-

497. zure and levy of goods, &c. to the value of five pounds five shillings and sixpence, part, &c. and

498. false return. 4th, Seizure of goods sufficient, but through negligence suffered great part of the same to be stolen and taken away, &c. only levied five pounds five shillings and sixpence, part, &c. and false return.

448. Declaration in B. R. against sheriffs of London for a false return.

451. Declaration

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451. Declaration and record in an action of tort in B. R. againſt the ſheriff *by the party grieved* for levying more than in the writ of execution mentioned without paying the overplus. Plea of general iſſue.

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455. Declaration in B. R. againſt ſheriff for a *falſe return* to a *fieri facias* ſued out on a judgment recovered by plaintiff in B. R of *nulla bona*.

456. Declaration againſt the ſheriffs of London for the voluntary eſcape of a perſon they had arreſted. 2d Count, neglecting to arreſt when they had him in view, and returning *non eſt inventus*.

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459. Declaration in B. R. againſt the ſheriff of Middleſex for *returning* to a *capias ad reſpondendum* that plaintiff *reſcued* the perſon arreſted, upon which an attachment iſſued againſt plaintiff, and he was impriſoned and put to great expence.

460. Declaration in C. B. againſt ſheriffs for making a *falſe return*, whereby plaintiff loſt the opportunity of recovering his debt and damages on a judgment he had recovered.

488. Declaration for *falſe return* againſt ſheriff of a *fieri facias* where original action was in debt or ſeizure of goods ſufficient to diſcharge, &c. but had not the money at

489. the return, &c. and falſe return. 2d Count like ſeizure, but by negligence ſome were ſtolen. 3d, defendant had goods, but ſheriff neglected to levy.

500. Declaration in B. R. againſt ſheriffs of London for a falſe return to a writ of *latitat*, ſtating the arreſt.

501. 2d Count, that they had defendant in view.

445. Declaration in B. R. againſt the ſheriff of Middleſex for taking goods off the premiſes which they had ſeized under a *fieri facias without firſt paying half a year's rent* which was in arrear. (*See* Actions on Statutes.)

447. Declaration in B. R. againſt the late ſheriff of Kent for falſely returning to a *fieri facias* that he had levied part of debt, part of which he had retained for poundage, and had paid reſidue to the plaintiff, which he had not done.

Declaration againſt a late ſheriff for a *falſe return* of a *teſtatum capias ad ſatisfaciendum*, having returned a *cepi corpus* when he might have taken the defendant, but did not.

For *negligence* in not taking defendant when he might have taken him, and for an *eſcape*, - - - Mor. Pr. 368.

Againſt the *marſhall* for an *eſcape* where defendant was charged with a declaration having removed himſelf by *habeas corpus*, - - - - *Ibid.* 373.

Againſt the *warden* of the Fleet for the eſcape of a priſoner charged in execution, - - - - *Ibid.* 377.

Declaration in C. B. againſt a ſheriff for arreſting a man on a *capias ad ſatisfaciendum* upon a judgment in C. B. in caſe, and ſuffering him to eſcape, - - - *Ibid.* 380.

	PRECEDENTS in BOOKS of PRACTICE, REPORTERS, &c.
Againſt *ſheriff* for eſcape of a priſoner arreſted upon a *latitat* in a former ſheriff's time, and duly aſſigned to defendant,	Mor. Pr. 382.
Againſt the ſheriff of Hampſhire for eſcape of a priſoner arreſted *on an attachment* out of chancery for coſts -	*Ibid.* 384.
Declaration againſt ſheriff for refuſing to arreſt plaintiff's debtor on meſne proceſs, - - - -	Lill Ent. 60.
Declaration againſt ſheriff for an eſcape on an *excommunicato capiendo*, - - - - -	*Ibid.* 87. 219.
Againſt the then late ſheriff of L. for an eſcape upon meſne proceſs, and *falſify returning* that he had his body,	Mod Ent. 136.
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Declaration in C. B. for an eſcape of one taken upon a *capias utlegatum* before judgment, - - - -	*Ibid.* 175.
Againſt the *warden* of the Fleet for eſcape of a perſon who had ſurrendered himſelf in diſcharge of his bail, and had been turned over by the late warden to the preſent warden, the now defendant, - - - - -	Plead. Aſſ. 114.
Declaration at the ſuit of an *infant* by his *prochein ami* againſt a *ſheriff* for a *falſe return*, whereby plaintiff was taken on an attachment for a *reſcous*, - - - -	1. R. Pr. C. B. 474.
Declaration againſt high bailiff of Weſtminſter for returning *nulla bona* to a *fieri facias*, though he had levied the debt,	Lill. Ent. 40.
Declaration in B. R. againſt a ſheriff for a falſe return of a *fieri facias* after a writ of error, - - - -	Plead. Aſſ. 207.
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Declaration for falſe return to *mandamus*. Plea, that plaintiff never was mayor, and therefore defendant ought not to deliver to him the enſigns of magiſtracy. Demurrer and joinder, - - - -	1. L. Raym. N. Ed. 1. 5. 6.
Declaration againſt the ſheriff of Middleſex, who on a pretended plaint in replevin by a third perſon, delivered the goods diſtrained to him *without ſufficient ſureties* to proſecute; the plaint was removed into B.R. and return adjudged to the plaintiff, but the goods were eloigned, -	Lill. Ent. 17.
Declaration on the ſtatute 23. *Hen.* 6. c. 10. againſt a *bailiff of a hundred* for refuſing to take bail on arreſt under a *capias ad reſpondendum* out of C. B. - -	*Ibid.* 71.
Againſt ſheriff of Middleſex for not taking ſufficient pledges in replevin, - - - - -	Mod. Ent. 215.
Againſt the ſheriff for refuſing to take bail on an *attachment out of chancery*, on ſtatute 23. *Hen.* 6. c. 10. -	1. H. Bl. Rep. 468.
Againſt the ſheriff for taking inſufficient ſureties in an action on replevin bond, - - - -	2. H. Bl. 43.
Declaration againſt the ſheriff for a return of *nulla bona* to a *fieri facias* after having levied the ſum, - -	4. T. R. 617.
Plea by *warden* of the Fleet to an action for an *eſcape*, a licence from the plaintiff to let the priſoner go at large. Replication, - - - - -	Mor. Pr. 389. 390. Pl.

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Plea to action for *eſcape*. 1ſt, not guilty; 2d, that priſoner broke the priſon by force, and eſcaped unknown to defendant; that he returned again, and that defendant hath the priſoner now in his cuſtody at the plaintiff's ſuit. 3d, freſh purſuit; that defendant took the priſoner, and now hath him in his cuſtody, - - - - - Mor. Pr. 391.

Plea by *chief bailiff* of a *liberty* to an action for eſcape, that rioters demoliſhed the gaol, bad, - - - 4. T. R. 789.

Caſe for eſcape of one taken on a *capias excommunicatum* for non-payment of tithes, 1. *Lut.* 122.

On meſne proceſs for an eſcape. The defendants, ſheriffs of L. plead a reſcue. Replication ſtates circumſtances to prove that defendants could have carried priſoner to gaol, and judgment for defendant, 1. *Lut.* 129.

Againſt bailiff of a liberty for not returning writ after arreſt made, 1. *Bro. Ent.* 42. *Rob. Ent.* 87. Againſt bailiff of liberty who executed a *fieri facias* and returned *nulla bona*, *Vid. Ent.* 6.

Againſt bailiff of a liberty for an *eſcape* on a *capias ad ſatisfaciendum*, reciting the whole of the judgment, *Rob. Ent.* 311.

Againſt the *mayor and commonalty* of the city of C. for a falſe return on a *mandamus* to reſtore an alderman to his rank where the writ and return are ſet out, *Vid. Ent.* 1.

Similar, againſt *maſter and fellows of college* for the expulſion of one of the fellows, and for a ſcandalous and falſe return to the *mandamus*, *Vid.* 3.

Againſt the *ſteward* of a hundred, who cauſed plaintiff's beaſts to be taken out of his cuſtody to be replevied *without pledges for the proſecution found* and return to be made, *Br. R.* 25. 1. *Br.* 208.

Againſt the officer of an inferior court who withdrew when the inquiſition ought to be taken after attachment of goods for the debt, and that the plea was diſcontinued, and goods delivered without the debt being ſatisfied, *Br. R.* 73. *Reg.* 199.

By the *marſhal* of the Marſhalſea againſt the *warden of the Fleet* for the *eſcape* of a perſon arreſted by the bailiff of the liberty of Weſtminſter on a *capias ad ſatisfaciendum*, and committed to the Fleet in execution by one of the juſtices of the bench on a *habeas corpus*, 2. *Br. Ent.* 13.

Againſt the *keeper of the priſon of Ludgate* for the *eſcape* of a bankrupt committed there by commiſſioners, *Rob. Ent.* 82. *Her.* 184.

Againſt the *bailiff of a liberty* for the *eſcape* of a perſon arreſted on a *capias* in debt at the ſuit of plaintiff, *Re. Dic.* 89. Similar againſt an attorney being bailiff of a franchiſe, *Cl. Aſſ.* 280. And on a bill of Middleſex, *Vid. Ent.* 40. *Rob. Ent.* 299.

For the *eſcape* on a *capias utlegatum* before judgment, *Ra. Ent.* 8. 1. *Br.* 227. 3. *Br.* 59. 94. *Her.* 74. *Aſſ.* 32. 1. *Br. Ent.* 18. *Br. R.* 33. Similar after declaration and before judgment, 2. *Mo. Int.* 96. Similar after judgment, *Ibid.* 98. 2. *Inſtr. Cl.* 189. Similar where ſheriff returned priſoner was *ſick* in priſon, *Rob. Ent.* 9. *Her.* 167. For an *eſcape* on a *capias ad ſatisfaciendum utlegatum* after judgment. *Rob. Ent.* 100. and writ not returned, 3. *Br.* 89. Similar on meſne proceſs, 3. *Lev. Rep.* 42. 45. Againſt ſheriff of Middleſex for an *eſcape* of one arreſted on a bill of Middleſex, *Tho. Ent.* 31. *Han.* 48.

Similar on a *latitat*, *Rob. Ent.* 303. and ſimilar againſt the *late ſheriff*, *Ibid.*

Similar on a *capias ad ſatisfaciendum* after recovery in aſſault, *Ibid.* 305. Againſt an *under ſheriff*, for not returning the writ of *extendi facias* delivered to him, *Cl. Aſſ.* 317.

For

For not returning *capias utlegatum* before judgment, *Cl. Aff.* 262. Againſt the ſheriff for *not taking ſufficient ſecurity* on an arreſt by bill of Middleſex, 2. *Sand. Rep.* 51. *Her.* 129. Similar, and *cepi corpus* returned by the ſheriff, *Ibid.* 150.

Againſt the ſheriff of London for an eſcape on proceſs out of the mayor's court, 1. *Br. Ent.* 49. Similar on a plaint levied on an account, *Rob. Ent.* 298. 308. Similar on an arreſt and impriſonment in the time of a *former* ſheriff, who on going out of office delivered the priſoner to the cuſtody of defendant, *Vid. Ent.* 15.

For an *eſcape* on an attachment of privilege, *Cl. Aff.* 261.

Againſt the ſheriff, who neglected to execute *teſtatum capias ad ſatisfaciendum* upon a perſon who was preſent, and for returning *non eſt inventus*, *Tho. Ent.* 38. Similar on a ſtatute ſtaple, *Rob. Ent.* 9. Similar of ſpecial *capias utlegatum*, and return of *nulla bona*, 2. *Vent. Rep.* 84. Againſt ſheriff for a *falſe return* on a *ſcire facias*, that defendant's executor waſted the goods, *Rob. Ent.* 34. 59. *Br. R.* 38. 1. *Br.* 235. 237. *Her.* 173. *Ra. Ent.* 11. Similar by adminiſtrator, *Rob. Ent.* 61. *Br. R.* 37. 2. *Inſt. Cl.* 186. Againſt a ſheriff, who on a *fieri facias* returned that he took goods to the value of the debt, which remained unſold, and *did not return* the *venditioni exponas* delivered to him, but converted the money to his own uſe, *Br. R.* 36. 1. *Br.* 233. Similar againſt *bailiff of a liberty* who executed the *fieri facias* and returned *nulla bona*, *Vid. Ent.* 6. and on a *capias ad ſatisfaciendum* after two *ſcire facias's* returned, *Rob. Ent.* 309.

Againſt the *warden of the Fleet* for an *eſcape*, *Re. Dec.* 93.

Againſt the marſhal of B. R. for an *eſcape* where the priſoner is committed to the Fleet and afterwards by another writ is committed to the marſhal, *Rob. Ent.* 302.

Againſt the *under marſhal* of the Marſhalſea court, who permitted a perſon under arreſt at the ſuit of plaintiff to go at large, *Rob. Ent.* 300. *Reg.* 111. Againſt *the bailiff of a liberty* for an *eſcape*, and *return* of *non eſt inventus* after the arreſt, *Br. R.* 52. Againſt a *turnkey* for the *eſcape* of one arreſted on a plaint levied on an account according to the cuſtom of the city, *Br. M. N.* 21. Againſt ſheriff's *officer*, who *refuſed to take good bail* for the plaintiff on an arreſt. Againſt the *bailiff*, who returned to ſheriff that plaintiff made a reſcue where no reſcue was made, *Cl. Man.* 182.

Againſt the *clerk of the errors* for *extortion* of fees on outlawry after judgment, *Rob. Ent.* 90. 1. *Br.* 266. Againſt a *filazer* of C. B. for ſuing out a writ of treſpaſs upon a diſſeiſin of lands held in ancient demeſne, *Br. R.* 53.

Againſt the *deputy ſealer*, who deceitfully and knowingly put upon a parcel of woollen cloth belonging to plaintiff a ſeal called a kerſey ſeal in the place of a ſeal called a half cloth, by means whereof the cloth was ſeized, as forfeited to the king, *Vid. Ent.* 52.

Againſt ſheriff, who executed the writ of ſeiſin and *elegit* in *waſte* after *ſuperſedeas* on a writ of error allowed and delivered to him, *Rob. Ent.* 47. *Her.* 213.

Againſt the *biſhop*, for a falſe return on a *fieri facias*, 1. *Syd.* 279.

By the *gaoler* againſt a priſoner for breaking the gaol, 2. *Mo. Int.* 95.

For *falſely returning* on a writ directed to the archbiſhop on an iſſue in *quare impedit*, without notice to the archbiſhop in his name, that one W. was admitted on the preſentation of the duke of, &c. *per quod* judgment was given againſt plaintiff, *Her.* 245.

Againſt an *eſcheator* for not taking an inquiſition by oath of jurors, but returned of his own motion into chancery; *per quod* plaintiff was removed from poſſeſſion of the manor demiſed to him by the guardian of the heir, *Reg.* 115.

Againſt *chirographer* of the bench, who indorſed a proclamation on fine ſo improperly, that plaintiff loſt the lands in *formedon*, *Co. Ent.* 15.

Againſt a *biſhop* for not admitting plaintiff's clerk on judgment in *quare impedit*, *Her.* 176.

Againſt a *bailiff* of a liberty, who on ſummons returned that plaintiff had nothing, and cauſed him to be taken and impriſoned on a *capias* till he paid the fine, *Ro. Ent.* 11.

Againſt *bailiff* of liberty in Middleſex for an *eſcape* of an arreſt on a *capias ad ſatisfaciendum* in treſpaſs after *pone* in B. R. *Upp.* 49. On a bill of Middleſex, *Upp.* 236.

Againſt a bailiff of a hundred, who neglected to arreſt one preſent by warrant on *alias capias ad ſatisfaciendum* in treſpaſs, 3. *Br.* 40.

Againſt mayor and bailiff for *eſcape* of one arreſted by plaint in caſe, *Her.* 89.

Againſt *ſheriff* of London for an *eſcape* on plaint, *Her.* 129.

Againſt *ſheriffs* of the city for *contempt* in *not proceeding in a plaint* in the city court, according to three writs of *procedendo* delivered to them, *Ra. Ent.* 83.

Againſt keeper of Ludgate for *eſcape* of a *bankrupt* committed by commiſſioners, *Her.* 184.

By the ſheriff againſt the keeper of the gaol for the eſcape of priſoners, *Reg.* 110.

By the keeper of a gaol againſt one committed by auditors to account, who eſcaped; *per quod* plaintiff paid the money, *F. N. Br.* 95. 130.

By the late ſheriff againſt a bailiff of a hundred, who by plaintiff's warrant levied money payable into the exchequer, and did not pay to plaintiff, *Her.* 165.

By ſheriff againſt keeper of a gaol, by whoſe *negligence* priſoner eſcaped, *Reg.* 110.

By an attorney againſt ſheriff on an *eſcape* of one arreſted by attachment of privilege in debt, *Her.* 128. Of a perſon arreſted by *bailiff* of a liberty on an attachment, and delivered to the under ſheriff, *Upp.* 50.

Againſt ſheriff of Middleſex on *eſcape* of a perſon arreſted with intention to declare in debt by executor on bond, *Upp.* 47.

For an eſcape on ſtatute merchant, *Reg.* 98. On *capias* to account, *Aſh.* 13. On judgment in treſpaſs, *Reg.* 98.

For falſe return of a member of parliament inſtead of plaintiff, who was duly elected, not alledged that it was determined for plaintiff, or found in the ſpecial verdict in the caſe. Judgment for defendant, 1. *Lut.* 82.

Action on the caſe by ſheriff againſt priſoner for an *eſcape* out of execution, 1. *Lut.* 64. The like on meſne proceſs. Plea, that he eſcaped with conſent of plaintiff to appear at the return of the writ, &c. *prout patet per recordum.* Replication, *nul tiel record*, and parties amend, 1. *Lut.* 71.

Againſt ſheriff, who *neglected to execute capias utlegatum* upon a perſon preſent, and return *non eſt inventus*, 3. *Br.* 35. *Aſh.* 57. A ſpecial *capias utlegatum* after judgment, *Upp.* 223. *Statutum capias ad ſatisfaciendum*, *Aſh.* 30. Statute ſtaple, *Her.* 167.

Caſe for eſcape of one taken on a *capias utlegatum* before judgment, 1. *Lut.* 108.

Againſt a ſheriff, who had executed *feri facias*, and *did not pay the money* to plaintiff, nor return the writ, 3. *Br.* 86.

Againſt ſheriff, who returned on a *fieri facias* that he took goods of the value, which remained unſold, and *did not return* the writ of *venditioni exponas* delivered to him, but converted the ſame to his own uſe, 1. *Br.* 339.

Againſt ſheriff, for *returning that the plaintiff had nothing when he had lands*, *Reg.* 98.

For *falſe return* on *ſcire facias* of *ſcire facias* when he had not, *Reg. Jud.* 9.

On *ſcire facias* of goods of teſtator, return *nulla bona*, &c. where executor after waſted goods and died, *Her.* 170.

Againſt ſheriff, who impannelled plaintiff on ſeveral juries where he had not lands of the annual value of four pounds, *Her.* 84.

For *not returning* writ of *exigi facias* after judgment, *Aſh.* 33.

For taking more than twelvepence in the pound for executing a *capias ad ſatisfaciendum*, *Her.* 190.

PLEAS, &c.

Plea of *reſcue* in taking priſoner to gaol. Plea good, though the reſcue is not returned, 3. *Lev.* 44.

Plea, *freſh purſuit* by marſhal for an eſcape. Replication, rejoinder, and iſſue, 2. *Mo. Int.* 115.

Plea,

Plea, by ſheriffs to an action for an eſcape on ſtatute Hen. 6. concerning ſheriffs taking bail, 2. *Mo. Int.* 151. 188. 190. *Br. R.* 96. and replication, that mainoaptors were not *ſufficient* in the country where the writ was ſued out, and iſſue, *Ro. Ent.* 309.

Plea, proteſting writ was not ſued out and delivered, did not take and arreſt ſaid R. *prout* and iſſue, 3. *Inſt. Cl.* 354.

Plea, that juſtices of peace at quarter ſeſſions made a *habeas corpus* to bring the party arreſted before them, and that being returned, the ſaid juſtices diſcharged him, 3. *Inſt. Cl.* 355.

Plea by ſheriff, that N. and M. waſted goods as by return, 3. *Inſt. Cl.* 376.

Plea, proteſting that they proceeded on the writs of *procedendo* with all diſpatch, and pleads, that the three writs, or either of them, were not delivered. *Prout*, replication, and iſſue on the delivery, 3. *Inſt. Cl.* 376.

Plea, did not permit to go at large, *Cl. Aſſ.* 83.

Plea, licence to diſcharge the priſoner. Replication maintains declaration, and iſſue, *Ro. Ent.* 301.

Plea to eſcape, that he took bail for appearance, *Ro. Ent.* 309.

Caſe on eſcape. Plea, not guilty, *Upp.* 51.

Plea, did not *permit* to go at large, 5 *Co.* 89.

Plea, did not take the defendant on a bill of Middleſex, *Upp.* 48. *Aſh.* 74.

Plea by bailiff of a liberty for an eſcape, that he did not take or arreſt. *Ro. Ent.* 87.

Plea by deputy marſhal to declaration, huſband and wife, that the wife, by huſband's conſent, *ordered* him to let the priſoner at large. Replication, iſſue on the order, *Mo. Ent.* 301.

Plea by officers, not guilty, *Bro. Met.* 24.

Againſt ſheriff, for falſe return of an outlawry. Plea, that before the inquiſition on the writ of outlawry made, a prerogative writ iſſued out of the exchequer, directed to the ſheriff to levy the king's debt, by virtue of which they ſeized all the goods of D. and had the money levied thereon before the barons of the exchequer, and that D. had no other goods. Demurrer, 2. *Vent.* 37.

Plea, not guilty, by the ſheriff to an action for an eſcape and falſe return.

Plea to declaration for eſcape on *latitat*. Plea, that defendant, as ſheriff, took *ſufficient ſecurity* for the priſoner, according to the form of the ſtatute; and traverſes that he permitted priſoner to go at large before taking ſufficient ſecurity. Replication, that defendant, before taking ſecurity, had notice that the writ of *latitat* was ſued out for the recovery of eighty pounds for a debt, *Tho.* 64.

4. Againſt other OFFICERS acting in ſome PUBLIC MINISTERIAL Capacity, as

1. Attornies. (*See* Deceit, *ante.*)
2. Juſtices of the Peace,
3. Cuſtoms, Officers of
4. Exciſe Officers, (13.)
5. Returning Officer (to ſerve in Parliament.)

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397. Declaration in B. R. in tort for *negligence* againſt an *attorney*, for *not preparing* the will of one A. B. in time for him to execute it before his death, by which A. B. intended to give plaintiff his eſtates, &c. whereby plaintiff loſt them, &c. Qu. If this action will lie.

Againſt an attorney, for acknowledging ſatisfaction on a judgment in debt without a warrant, 1. *Bro. Ent.* 26. Same in dower, *Ro. Ent.* 37.

For appearing for plaintiff to an original without proceſs, *Cl. Aſſ.* 286.

For ſuing out a *ca. ſa.* without a warrant, *Br. R.* 47. For ſuing out an *extenđi faciaſ*; declaration and judgment by *non ſum informatus*, and the money paid by the plaintiff. Note, verdict for plaintiff, but judgment was arreſted, *Robinſ. Ent.* 15.

Similar againſt one who made default, where judgment was for defendant, 2. *Inſtr. Cl.* 184.

Similar, where there was an outlawry after judgment, *Rob. Ent.* 98.

Againſt an attorney, for tearing and defacing a bill delivered to him, by means whereof plaintiff could not recover his debt, *Cl. Aſſ.* 269. Againſt the *clerk of the chief clerks*, clerks of B. R. for appearing for plaintiff on a *latitat* without any warrant, where there was a declaration and judgment, *Br. R.* 12.

Againſt an attorney, for taking fees and money for the entry of ſix iſſues on the record, when he had only entered four, 1. *Bro. Ent.* 33.

Againſt an attorney, who cauſed plaintiff to be taken in execution at the ſuit of T. without his conſent, and when he knew plaintiff had a releaſe, 1. *Bro. Int.* 78.

For recovering judgment againſt plaintiff at the ſuit of H. and ſuing out a *fieri facias* thereupon, after an agreement entered into between plaintiff and defendant, 1. *Bro. Ent.* 85.

For counterfeiting *latitat*, on which plaintiff was taken, and in cuſtody, *Thomp. Ent.* 31. By the ſheriff againſt an attorney, who counterfeited the warrant upon the writ of *capias*, *Br. R.* 50.

Againſt an attorney, who recovered judgment on *poſtea* to be ſigned, and ſued out writ of *fieri facias* againſt plaintiff before the time being given to ſhew cauſe why there ſhould not be judgment, *Thomp Ent.* 43.

Againſt an attorney, who took plaintiff in execution on a judgment of *non. proſ.* after a releaſe to him made by defendant in the action, *Br. R.* 65.

Againſt the *clerk* in the office, who unduly obtained judgment againſt one H. B. who afterwards died inteſtate, and thereupon had letters of adminiſtration of the goods, &c. of the ſaid H.; and for pleading the ſaid judgment in bar as a real judgment to plaintiff's demand, under pretence of which, &c. *Re. Dec.* 80.

By an *attorney* againſt an *attorney*, for arreſt and impriſonment upon a writ of privilege, and procuring plaintiff to be arreſted at the ſuit of others, and not proſecuting ſuch ſuits to effect, *Rob. Ent.* 90.

Againſt an attorney, where one H. H. was indebted to plaintiff in eighty pounds, and being ſeiſed in fee of lands to the value of three hundred pounds, and plaintiff having ſued the ſaid H. for his debt, the defendant (attorney) and H. ſet up a fraudulent conveyance to defraud plaintiff of his debt, *Re. Dec.* 85, 86.

Againſt an attorney who appeared without warrant for plaintiff to the original without proceſs, *Iler.* 145. 180. *diſh.* 38. On an *extendi facias*, whereon declaration and judgment in debt, and money paid, *iler.* 143. Where an imparlance *non informatus, ſcire facias*, execution by default, and *capias ad ſatisfaciendum*, 3. *Br.* 98.

Againſt clerk of the chief clerks of B. R. who appeared for plaintiff on a *latitat* without a warrant, 1. *Br.* 195.

Againſt an attorney, who being retained by tenant in dower, made default after imparlance, *Ra. Ent.* 2. *Vet. Int.* 5.

Againſt an attorney, who defaced a bill delivered to him, ſo that plaintiff could not recover on it, *diſh.* 16.

Againſt an attorney, who on receiving principal, the debt and damages in the next term, acknowledged ſatisfaction, 3. *Br.* 62.

Againſt an attorney, who delivered to obligor the bond delivered to him to ſue upon, *Let.* 122.

Againſt an attorney in a plea of land, who by colluſion with demandant made default on the *dies datus*; *per quod*, plaintiff loſt the land, *Reg.* 113. Where he confeſſes the action in *quare impedit*, *Reg.* 116.

By the city of London againſt the mayor, for refuſing the poll in the election to office of bridge-maſter, according to the cuſtom of the city, with the number of the roll, 2. *Vent.* 25.

For entry of an action in an inferior court, and procuring judgment to be entered, and plaintiff to be taken in execution without any notice of it, 1. *Lut.* 67.

For arreſting plaintiff without cauſe, being mayor of London, 1. *Lut.* 68.

Againſt a prothonotary of C. B. for irregular ſigning a ſuperſedeas to diſcharge a perſon out of priſon who was arreſted at the ſuit of plaintiff, 1. *Lut.* 96.

Againſt an *attorney* in the ſheriff's court in London, for not ſuing out a plaint againſt T. impriſoned at plaintiff's ſuit, who was diſcharged for want of declaration, *Vid. Ent.* 16. Same againſt an attorney, by means whereof defendant recovered againſt plaintiff, *Cl. Aſſ.* 278.

Againſt an attorney, for *imparling* to debt on bond without entering of the conditions of the covenants to be performed, by which means plaintiff was not admitted to plead performance of conditions, *Rob. Ent.* 59. *Her.* 197.

Againſt an attorney, for ſuing out an *extendi facias* in debt, and never having delivered proclamation to the ſheriff, *Vid. Ent.* 63. *Her.* 202.

Againſt an attorney, for non-payment of a fine in treſpaſs, and not ſending the writ of *ſuperſedeas* to the writ of *extendi facias* to be withheld, 1. *Bro. Ent.* 33. Againſt an attorney, who undertook to deliver to plaintiff *fieri facias* upon a warrant of attorney acknowledged for judgment by the debtor, and defendant did not do it, *Re. Dec.* 33.

PLEAS, &c.

Plea to an action againſt an *attorney*, who appeared without a warrant, that judgment was ſigned againſt plaintiff by *non informatus*, for want of inſtructions, *Cl. Aſſ.* 289. Demurrer and joinder. Replication to like plea, proteſting that he did not retain, for plea, that he did not requeſt defendant to appear. Rejoinder, and iſſue on the retainer, 3. *Inſt. Cl.* 369. Plea, did not retain, *Aſſ.* 39.

Plea to declaration againſt *attorney*, for acknowledging ſatisfaction without warrant, that plaintiff retained him to acknowledge, &c. Replication, and iſſue on the retainer, 3. *Inſt. Cl.* 372. *Ro. Ent.* 38.

For cancelling a bond againſt an attorney. Plea, that he did it as an acquittance, to be cancelled. Replication, that he delivered it to be ſafely kept; and iſſue, 3. *Inſt. Cl.* 375. That he was retained by principal in the bond, *Her.* 181. *Ro. Ent.* 18.

Plea, retainer by a ſtranger to appear for plaintiff, and did appear, and for want of inſtructions pleaded *non informatus*, *Ro. Ent.* 18. 99. Replication on the retainer, *Ro. Ent.* 20.

Plea, that plaintiff *retained* him to appear in *one* action, and *requeſted* him to appear in *all*. Replication, did not retain, &c.; for plea, did not requeſt defendant to appear for him in all the actions, *Her.* 183. *Ro. Ent.* 20. Like plea. Replication. Rejoinder, and iſſue, 1. *Bro.* 33.

Plea to declaration for acknowledging, &c. without warrant; proteſting that plaintiff made warrants; for plea, that there was an agreement between the parties, 1. *Bro.* 26.

Plea to declaration againſt attorney, for putting in bail, and confeſſing judgment without a warrant, that plaintiff, by writing, retained to put in bail and confeſs judgment. Replication, that plaintiff not being able to read, ſigned the writing as an acquittance for twenty pounds, and not to retain defendant, *Br. R.* 91.

Plea, that one A. retained defendant to ſue out for plaintiff a writ of *ſuperſedeas*, and receive a declaration, who after imparlance ordered his ſervant to requeſt plaintiff's anſwer, who gave none, and defendant, for want of inſtruc-

tions pleaded *non informatus*. Replication, that A. did not retain defendant for plaintiff; and iſſue, *Ro. Ent.* 99.

Plea, that the conveyance was *bona fide*, and not fraudulent, but for valuable conſideration. Replication, maintaining the Count, and traverſes the bar. Rejoinder, and iſſue on the traverſe, *Re. Dec.* 87.

2. Juſtices of the Peace.

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474. Declaration againſt a *juſtice of the peace* for malicioufly convicting plaintiff of having ſworn two hundred profane oaths without hearing the plaintiff or his witneſſes in his defence, whereby the defendant fined the plaintiff ten pounds, and on refuſing to pay the money, committed him to priſon to hard labour.

3. Exciſe Officers—Surveyor, and Gauger.

466. Declaration in B. R. by plaintiff, a *brewer*, againſt defendant, an *exciſe officer*, for charging plaintiff a ſecond time with the duty of excife on a quantity of ſtrong beer, after his having paid it to another officer, who had gauged the liquor, and taken the true quantity, whereby the plaintiff was obliged to petition the commiſſioners to be releaſed from the overcharge, whereby he was put to great expence.

4. Cuſtom Houſe Officers.

462. Declaration in B. R. againſt the collector of the cuſtoms of the port of Carliſle, for refuſing to make an entry of goods which plaintiff was going to export, whereby plaintiff was hindered from exporting, and
464. put to expence, &c. 2d Count, loſs of bounty, and
465. obliged to ſell coaſt-wiſe. 3d Count, detaining veſſel till average price of goods rofe to an amount higher than permitted for exportation.

5. Returning Officers—Mayor of Borough.

478. Declaration in B. R. againſt the mayor of a borough, for *not returning* plaintiff when duly elected to ſerve as a member in parliament for the borough, but returning other candidates, *ſtating the proceedings of the ſelect committee and the houſe of commons* in declaring plaintiff to be duly elected, &c. &c.

5. Againſt

5. Againſt OTHER PERSONS acting in a PUBLIC CAPACITY, whom the Law recognizes as ſuch.

1. Carriers { 1. By Land (14.) / 2. Water (15.)

(*See* Owners and Maſters of Ships, Negligence, *ante*.)

2. Farriers,
3. Innkeepers,
4. Livery ſtable Keepers,
5. Surgeons,
6. Man Midwives,
7. Midwives.

} (16.)

1. Carriers by Land.

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502. Declaration in C. B. againſt the *proprietors of a London* and Bury ſtage-coach, for ſending a carriage *unfit* for the journey, which broke down, whereby plaintiff, an outſide paſſenger, had his leg broke.

504. Declaration in B. R. at the ſuit of *the proprietor of a waggon* againſt a *warehouſe keeper*, for delivering parcels to other *carriers*, which had been left with defendant to be delivered to plaintiff to go in his waggon.

2. Carriers by Water. (*See* Negligence, &c. by Maſters and Owners of Ships, *ante*.)

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503. Declaration for *negligence* againſt a maſter and owner of a veſſel, in loſing part of goods belonging to plaintiff, delivered to defendant's care, &c.

Againſt a carrier of two parcels of merchandizes delivered to him at two ſeveral times to be carried, and defendant ſuffered one parcel to get wet, and loſt the other, *Her.* 76.

Againſt the ſervant of a waterman, for goods loſt, 3. *Br.* 43.

Againſt a common *carrier*, for goods and chattels delivered to carry, which were loſt, 2. *Ven.* 75. 2. *Mo. Int.* 91. Goods and money in a coffer locked up, *Her.* 226. *Aſh.* 162. *Br. R.* 12. 1. *Br.* 193.

Againſt a common waterman, for money and goods in a cheſt loſt, *Vid.* 37. 2. *Inſt. Cl.* 180. 183.

3. Farriers.

3. Farriers.

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415. Tort againſt a *farrier*, for keeping a horſe that had an infectious diſeaſe in his ſtable, which was divided from plaintiff's ſtable only by a thin partition of boards, and plaintiff's horſe caught the diſorder, and died through defendant's negligence.

4. Innkeepers, Publicans, Livery-ſtable Keepers.

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383. Count againſt an *innkeeper*, for maliciouſly *withdrawing cuſtomers* from plaintiff's *inn* to another *inn*, during
384. the time he held over the former *inn*, and opening a new *inn* nearly oppoſite.
417. Againſt a *livery-ſtable keeper*, for delivering plaintiff's horſe to another perſon.

5. Surgeons, Man-Midwives, Midwife.

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410. Declaration in B. R. in tort againſt a *man-midwife*, for unſkilfulneſs in lacerating the womb of plaintiff's wife, and unſkilfully treating a ſuppreſſion of urine.

6. Other Persons not acting in any *public* Capacity.

For Negligence, Nonfeasance, and Misfeasance.

By Maſter and Servant—Landlord and Tenant, (*See* Exceſſive Diſtreſs)—Lodgers—Owners and Maſters of Ships, (*See* Negligence in Navigating Ships)—Mariners—Merchant and Factor, (*See* Deceit, *ante*)—Proprietors of Stage Coaches, (*See* Carriers, *ante*)—Hackney Coaches—Livery-ſtable Keeper—Printers, (*See* Copyright.)

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380. Declaration in B. R. by *maſter* againſt defendant, for *not delivering* up an articled *ſervant*.

381. Declara-

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381. Declaration in C. B. by late *landlord* againſt late *tenant* in tort, for misfeaſance and *nonfeaſance* in *holding over*, and *not delivering* up premiſes at the end of the demiſe, *whereby* plaintiff loſt the benefit of a contract he had made with another perſon for letting the premiſes, which was a public-houſe, at an improved rent, and maliciouſly *withdrawing cuſtomers* from plaintiff's inn to another inn, during the time he held over the former inn, and opening a new inn nearly oppoſite. Several
388. Counts. PLEA, *Judgment recovered* in *ejectment*, and
391. in an action *for meſne profits*. REPLICATION, that the cauſes of action are different.

392. Declaration in B. R. in tort, for *not re-delivering* a gelding which defendant had taken, damage feaſant after *tender* of amends; with a Count in trover.

393. Declaration in B. R. in tort, for nonfeaſance in not cleaning and re-delivering a gun; with a Count in trover.

402. Declaration in B. R. at the ſuit of *proprietors of a ſtage-coach* againſt their *coachman* for loſing a trunk and its contents, which they were obliged to pay for to the owner.

407. Declaration *in the court of Kingſton upon Thames* by *maſter* againſt his *ſhepherd*, for negligence in ſuffering ſheep to eat up tares, contrary to expreſs orders.

411. Declaration for uſing the furniture in a ready-furniſhed *lodging* in an *untenant-like* manner, and damaging the ſame.

412. Declaration in B. R. by the *owner of a hackny-coach* againſt defendant, who called his coach off the ſtand, and put into the ſame a quantity of ſmuggled goods that were after ſeized by the exciſe officers, and the coach, horſes with harneſs conveying the ſame were condemned and forfeited.

Declaration againſt a *dyer* for inartificially dying broad cloth, - - - - - Mor. Pr. 422

For *not ſending fiſh* by a waterman to Richmond in time, whereby they were ſpoiled, - - - - *Ibid.* 426

Againſt a *farrier*, for unſkilfully bleeding plaintiff's horſe, whereby he died, - - - - - *Ibid.* 428

By a *ſailor* againſt a captain of a man of war, for negligence in *not entering the plaintiff's name in the ſhip's books*, whereby plaintiff loſt his wages and a ſhare of prize-money, - - - - - *Ibid.* 429

By an *hackney coachman* againſt a *paviour*, for leaving a hole open in the ſtreet without ſetting up ſome mark, by which means the plaintiff was thrown off his box and greatly hurt, - - - - - *Ibid.* 438

Declaration in caſe againſt *carriers*, for not taking care to carry goods from Birmingham to London, and to deli-

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	PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.
ver the ſame to S. T. to the plaintiff's uſe. Breach of negligence aſſigned. 2d Count, the like breach. 3d Count, breach of promiſe aſſigned. (Qu. If Aſſumpſit and Tort can be joined, vide the report.) Two pleas, not guilty, and did not promiſe. Qu. vide -	2. Wilſ. Rep. 430
Plea of not guilty in caſe or tort, - - - - -	1. R. Pr. C. B. 148
Plea, *actio non accrevit infra ſix annos.* Replication. Rejoinder, - - - - - -	*Ibid.* 149
Declaration for laying his ſhip to an anchor without a buoy, whereby plaintiff's ſhip ſplit on the anchor. 2d Count, for continuing the anchor without a buoy to ſhew where it lay, - - - - -	Lill. Ent. 80
Declaration by a maſter againſt a ſervant, who was a manager of a quarry out of which ſlate was made, for abſenting himſelf from his ſervice, whereby ſeveral other ſervants and horſes attending on him were obliged to be ſtill, - - - - - -	Pl. Aſſ. 76

Nonfeaſance and Negligence.

1. Navigating Ships, and Deviation,
2. Driving Carriages.

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394.	Declaration in B. R. in tort by the *owner of a ſloop* coming up in the river of Thames againſt the owners of an another, for *dropping their anchor without a buoy*, whereby plaintiff's ſloop fell on the anchor, and was bulged.
400.	Declaration in B. R. by the governors, &c. of Bedford Level againſt defendant, for *negligently conducting his barges*, and running foul of and carrying away the ſluices, &c.
405.	Declaration in B. R. in tort, for that plaintiff had delivered to defendant a caſk of gunpowder to be carried from A. to B. and had injured the ſame, for *deviating* from the cuſtomary paſſage, veſſel ſhipwrecked, and gunpowder entirely loſt. The inſurers refuſed to pay the inſurances on account of the *deviation*.
405.	Declaration in B. R. for *mooring ſhip ſo cloſe to plaintiff's ſhip in a harbour*, that plaintiff's ſhip was ſqueezed between defendant's ſhip and the quay of the harbour, that when the tide came in ſhe fell down and was bulged.
406.	Againſt defendant, part owner of a ſhip with plaintiff's ſhip, lying at anchor at, &c. and was to be freighted to L. defendant cauſed the *maſter to deviate* from his intended voyage, and to carry him to W. and ſhip in turn was loſt.

Decla-

PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.

Declaration by the Trinity Company againſt the *maſter of a ſhip* running foul on a beacon placed as a ſea-mark, and greatly damaging the ſame, - - - Mor. Pr.

For miſ'caſance and negligence againſt a perſon employed by the plaintiff to *navigate his boat* with malt from a certain place to another place; and a Count in trover, - 1. Wilſ. Rep. 319. b.

For *unſkil, ully managing a ſhip*, whereby ſhe run againſt a lighter, and damaged plaintiff's goods therein, - 1. R. Pr. C. B.

Declaration againſt the maſter of a hoy, for falling foul of and ſinking plaintiff's dung boat, *Mod. Ent.* 217. - Lill. Ent. 38

Againſt a captain of a ſhip, for negligence in *navigating his ſhip*, whereby it ſtruck againſt a ſhip, on board of which was plaintiff's goods, and goods thereby ſpoiled and damaged, - - - - 5. T. R. 649.

2. Driving Carriages.

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PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.

396. For *negligence* in *running againſt plaintiff's cart* and turning it over, *throwing out of it a box* of ſtarch which was in it, whereby the box was broke, and the ſtarch ſpoiled.

397. Declaration in C. B. for driving a chaiſe againſt the horſe of plaintiff, whereby plaintiff's horſe was killed.

400. Againſt a poſt-boy, for *negligence in running over* plaintiff with a chaiſe, and breaking his legs.

401. Declaration in B. R. againſt defendant for ſo *negligently by his ſervant* driving his carriage, that he drove over plaintiff and broke his ribs.

Tort againſt *maſter*, for his ſervant wilfully driving his carriage againſt plaintiff's chaiſe, - - 6. T. R. 125.

Declaration by a paſſenger againſt a carrier, in overturning his *waggon*, whereby plaintiff's collar-bone was broke, - Lill. Ent. 84.

For driving a coach over a chaiſe, and thereby buiſing plaintiff, - - - - - Mod. Ent. 158.

Torts againſt Poſt Officers and others.

Declaration for not ſupplying with able horſes, &c. to perform a journey, *againſt an innkeeper*, - - Mor. Pr. 394.

Againſt an *innkeeper*, to recover the value of a horſe ſtabbed at his inn, which died of the wounds, - - *Ibid.* 443.

Special declaration by way of ſpecial cuſtom, by a *carrier* againſt a carrier, where the goods were to be forwarded from place to place, - - - - *Ibid.* 445.

Againſt an *attorney*, for *negligence* in the duty of his office, in not cauſing a perſon in priſon at his client's ſuit to be charged in execution, by reaſon whereof priſoner was diſcharged by writ of *ſuperſedeas*, - - 1. Wilſ. Rep. 325 b.

Againſt *juſtices of peace*, for *refuſing to grant a licence* to the plaintiff to keep an inn and an alehouſe, - - 2. Wilſ. Rep. 123.

	PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.
Againſt the *poſtmaſter* of Ipſwich, for wrongfully keeping and detaining the plaintiff's letters direct d to him an unreaſonable time, which the defendant ought to have delivered to him. Plea, not guilty, - - -	2. Wilſ. Rep. 443
Againſt a *headborough*, for billeting ſoldiers on plaintiff without his conſent, contrary to the ſtatute, - - -	Lill. Ent 21
Againſt the *returning officer*, for refuſing to permit the plaintiff to give his vote at an election of members to ſerve in parliament, - - - - - -	2. Ld. Raym. 938
Againſt an *innkeeper*, for ſuffering the horſe of his gueſt to ſtray from the inn through *negligence*, - -	Mod. Ent. 144
Againſt a common carrier, upon the cuſtom of the realm, -	*Ibid.* 145
On the ſtatute of 8. Ann againſt the *chief bailiff* of the dutchy of Lancaſter, at the ſuit of the *adminiſtrator*, to recover rent due to the inteſtate, after notice given to the officer that ſuch rent was due, *Lill. Ent.* 40, - -	*Ibid.* 221
Declaration by *adminiſtrator* againſt an *attorney*, in not proſecuting to judgment a priſoner in cuſtody at the ſuit of inteſtate, who ſuperſeded his action. *Per quod*, &c. -	1. T. R. 656
Declaration againſt a farmer and *collector of poſt-horſe duties*, for refuſing to deliver plaintiff certificates, and to paſs plaintiff's ſtamp-office weekly accounts, and for extortion, 27. G. 3 c. 26. - - - - -	6. T. R. 163
Plea (to an action at the ſuit of a corporation of Guildford againſt defendant, for not taking upon himſelf the office of bailiff, purſuant to his election), that he is a diſſenter, and did not receive the ſacrament, to 13. Car 2. ſt. 2. c. 1. -	Lill. Ent. 109
Declaration in tort on the cuſtom of the realm againſt common carriers, for not delivering goods, - -	Pl. Aſſ. 248
Declaration againſt a common carrier by land; with a Count in trover for a box of one hundred guineas, - -	1. Ld. Raym. 58

Againſt an innholder, for goods loſt in his inn, *Tho.* 42. *Vid.* 151. *Inſt. Cl.* 173. and for a bag with money ſtolen through his neglect, and loſt, *Tho* 74. *Br. R.* 13. For a horſe loſt, 8. *Co.* 32. *Upp.* 239. *Her.* 243. 250. *Ro. Ent.* 22, 23. Goods, *Ra. Ent.* 404. *Co. Ent.* 347. *Aſh.* 48

Againſt a *common waterman*, for money and goods in a cheſt loſt, *Vid.* 37. 2. *Inſtr. Cl.* 180. 183.

Againſt a common carrier, for goods and chattels delivered to carry which were loſt, 2. *Vin* 75 2. *Mo Ent.* 91. Goods in a coffer, *Her.* 226. *Aſh.* 162.

By illegal proſecution, contrary to law and cuſtom of the realm, *Cl. ſ.* 35.

Againſt carriers, for goods and chattels in a coffer locked up, *Br. R.* 12. 1. *Br.* 193.

By leſſor againſt leſſee at will of a cottage burned by negligence, *Aſh.* 56. Like by huſband and wife, *Aſh.* 2 .

Againſt an innkeeper, for bag and money loſt in the inn, *Ra. Ent.* 404. Of a purſe with money, *Ra. Ent* 405. *Vet. Int.* 20. 1. *Br.* 196.

Of a pack of goods and money, *Ra. Ent.* 404. Chamber broke open, and goods and money taken away, *Reg* 105. Purſe and money of plaintiff loſt in cuſtody of ſervant, *Co. Ent.* 347. *Ben* 169. Money, *Reg.* 104.

By *executor*, leſſee of a mill, who, with co-executor, demiſed mill to defendant for a term of years, and defendant, by *negligence*, burned it, *Her.* 161.

For ſuing in the court of admiralty, *Ra. Ent.* 23. *Dy.* 159.

For

For ſuing in court chriſtian after prohibition delivered, and for throwing it in the mud, *F. N. Br.* 92.

For arreſting plaintiff in city court without any cauſe of action, *Aſh.* 4.

For executing writ after writ of error allowed, *Her.* 233.

Plea, that plaintiff, by writing, releaſed to defendant. Replication, that releaſe was under *dureſs*, *Tho.* 72.

Plea, not guilty, 2. *Vent.* 289.

Plea to declaration againſt occupier of lands, who by cuſtom ought to carry off tithes, &c.; proteſting, &c. for plea, that the proprietor and farmer of tithes were uſed to carry off tithes at their own proper charges; and traverſes the *cuſtom*; iſſue on the traverſe, *Tho.* 75. 3. *Inſt. Cl.* 320.

Plea (to negligently keeping fire), that a ſtranger put fire in a houſe adjoining plaintiff's houſe; and traverſe the negligence, 1. *Bro.* 29. 3. *Inſtr. Cl.* 337.

Plea, that defendant did not burn the mill, *modo et forma*, *Ko. Ent.* 65.

Plea by *innkeeper*, that defendant gratuitouſly entertained plaintiff for the night; and traverſes keeping a common inn, 2. *Mo. Int.* 147. 3. *Inſtr. Cl.* 340. Replication and iſſue on the traverſe.

Plea (to declaration for horſe loſt by negligence), that plaintiff requeſted defendant to put his horſe to paſture, who was ſo put and led away by robbers; and traverſe that he was led away by negligence of plaintiff or his ſervants. Replication, maintains the declaration; and traverſe the requeſt to put horſe to paſture, *Ra. Ent.* 23. 3. *Inſtr. Cl.* 341; and iſſue on the traverſe.

Plea, *non. cul. Vent.* 77.

Plea by *innkeeper*, proteſting that goods were not brought into the houſe; pleads, that they were not ſtolen by robbers, &c. 3. *Inſtr.*

Plea by *carrier*, proteſting that there were not one hundred guineas in the bag; pleads, that the bag by plaintiff's ſervant, 3. *Inſtr. Cl.* 339. Replication and iſſue.

Plea, that he planted the *thorns* properly, and traverſes negligence, *Ra. Ent.* 13.

Plea, that he ſerved the horſe well and ſufficiently; and traverſes negligence, *Ra. Ent.* 3.

Plea, that a *hired* mare periſhed with divers diſeaſes; and traverſes that he overloaded her, *Her.* 101.

Plea by barber, that he did not ſhave with dirty ſoap, *Ra. Ent.* 2.

Plea, that plaintiff being *executor*, waſted goods until the return of the writ, *Ra. Ent.* 11.

Plea, that certain writs of *procedendo* were not delivered to the ſheriff defendant, *Ra. Ent.* 84.

Plea by carrier, that plaintiff did not deliver to defendant the cheſt with money, *Ra. Ent.* 9.

Againſt a *ſmith*, for negligently ſhoeing a horſe, *Reg.* 106. *F. N. Br.* 94.

For negligently planting thorns in the ditch, *Ra. Ent.* 13.

Againſt occupier of a crane, for a caſk of wine burſt by *negligent* cranage, *Ra. Ent.*

For ſo negligently keeping a horſe to be depaſtured, that it was ſtolen, *Her.* 249.

Plaintiff delivered cattle to defendant, with hay and graſs, for a ſum of money for a certain time, and defendant kept them ſo *improvidently*, that ſeven of them were much damaged, 1. *Br.* 251.

For cattle that were delivered to keep, ſo *negligently* kept that part died, and the wool of the reſidue was loſt, *Reg.* 107.

Againſt an innkeeper, for a horſe delivered to him to ride, *Her.* 243. Horſe ſold, *Upp.* 231.

Againſt a *barber*, who unſkilfully ſhaved plaintiff with unwholeſome ſoap, *Ra. Ent.*

Againſt a taylor, for *cabbaging* the cloth, and making the garments ſo ſmall that they were uſeleſs, *Aſh.* 12.

PLEAS BY, &c.

Plea by farrier, that he well and ſkilfully ſhoed the horſe; and traverſes that he

fixed the ſhoe as in the declaration is mentioned; and iſſue, 1. *Bro.* 31. 3. *Inſtr. Cl.* 352.

Plea, the horſe died with various infirmities; and traverſes that the horſe died with hard riding. Iſſue on the traverſe, 1. *Bro.* 4. 3. *Inſtr. Cl.* 350. Like of mare hired; traverſed overloading her, *Ro. Ent.* 51.

Plea by barber, that he did not ſhave, 3. *Inſtr. Cl.* 349.

Plea, that defendant cultivated the land in an huſbandlike manner; and traverſe negligence. Iſſue on the traverſe, 1. *Bro.* 73. 3. *Inſtr. Cl.* 353.

Plea, that goods were burned in the inn on the way by the act of God, and not through negligence. Demurrer ſpecial, *Vi. Ent.* 29.

Plea by *waterman*, that the boat, with goods in the cheſt, by tempeſt was ſunk without defendant's *negligence*; and traverſes that they were loſt for want of ſafe cuſtody, *Vid.* 3. 38. *Br. R.* 101. 2. *Mo. Int.* 95. 3. *Inſtr. Cl.* 303. *Cl. Aſſ.* 99.

Plea, that a ſtranger put fire in the houſe adjoining plaintiff's houſe; and traverſes negligently keeping fire, 3. *Inſtr. Cl.* 337.

Plea, that goods were not burnt through negligently keeping fire, 3. *Inſtr. Cl.* 337.

Plea, that he kept the fire, &c. Replication, and iſſue on negligently keeping the fire, 3. *Inſtr. Cl.* 338.

Other Misfeaſances than ſuch as are reducible to particular Offices and Employments.

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409. Declaration in B. R. againſt defendant, for giving falſe inſtructions to a bailiff, whereby he arreſted an improper perſon.

IV. TORTS in Disturbance of Incorporeal Rights.

1. Commons.
2. Fairs.
3. Offices.
4. Seats in Churches.
5. Ways.
6. Other Rights than any of the foregoing, Tolls. Ferries, Franchiſes, &c.

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497. Declaration in C. B. againſt defendant for digging *turfs* and peats on a piece of ground whereon plaintiff was entitled to *common of turbary* in right of a meſſuage, and carrying them away, and converting, &c; *per quod*, plaintiff could not enjoy his ſaid common of turbary in ſo ample a manner as he ought to have done.

506. Declaration by a freeman of N. claiming right of common, as *freeman reſident, and paying ſcot and lot*, againſt defendant, for diſturbing his right by digging pits, erecting houſes, &c. and incloſing, &c.

508. Declaration in B. R. for depaſturing cattle on a *common*; *per quod*, the plaintiff could not enjoy his right of common as he ought. Plea to firſt Count. General iſſue to ſecond Count, *nil dicit. Unica ſatisfactio.*

513. De-

Vol. VIII. Page		Precedents in Books of Practice, Reporters, &c.
513.	Declaration in C. B. againſt defendant, for preventing plaintiff from enjoying his *common of turbary*, by hindering plaintiff and his ſervant from entering on the common. Various Counts.	
528.	Declaration in B. R. by copyholder, for diſturbance of common by *ſurcharging* common with cattle.	
530.	Declaration in C. B againſt defendant, for diſturbing plaintiff in his right of common by incloſing a part of the common. Several Counts.	
	Declaration where a vicar claims a right of *common appurtenant* to glebe lands, defendant tilled the ſame, -	Mor. Pr. 320
	Declaration for *digging holes in a common*, whereby plaintiff was deprived of his common. 2d Count, where five pieces of land were uſed alternately to be ſet out, one every two years for paſture, - - - - - -	*Ibid.* 323
	For *overſtocking a common* where plaintiff had a right to put a certain number of ſheep, whereby plaintiff was deprived of the uſe of the common, - - - - -	*Ibid.* 326
	For diſturbance of common of paſture, by *turning on ſheep*, lambs, &c. Plea thereto, not guilty. - -	*Ibid.* 279
	Declaration in caſe for diſturbing the plaintiff in his right of common, and a *right to cut and take ruſhes* upon the common for litter for his cattle, by an ancient cuſtom, -	*Ibid.* 456
	Declaration for deſtroying plaintiff's common of paſture by rabbits, - - - - - -	Lill. Ent. 62
	Declaration for depriving plaintiff of his right of common of paſture, - - - - - -	Pl. Aſſ. 214
	Declaration in caſe for *incloſing* a common, by which plaintiff could not enjoy his common *in ſo beneficial a manner* as he had before done, - - - - - -	2. Ld. Raym. 1225
	Declaration by tenant of a copyholder againſt another, for *digging turf* upon the common of the copyholders, by reaſon whereof the tenant could not enjoy for his cattle as freely as before, - - - - - -	Mod. Ent. 164
	For *obſtructing* plaintiff in his common, - -	*Ibid.* 121
	Declaration for *incloſing* common, - - -	Com. Rep. 344
	Action on the caſe for diſturbance of common, brought by a copyholder, and makes title. Defendant makes title to the common as well, &c. as copyholder in fee, by grant of the lord of another manor, and juſtifies. Replication, traverſes the preſcription, &c. Special verdict, finds that the meſſuage, &c. of defendant, is within the foreſt of S. and preſcribes for common alledged by defendant, and judgment for defendant, 1. *Lut.* 74.	
	Action on the caſe by leſſee for years, for diſturbance of common claimed by preſcription in his leſſors, alledging that defendant put in ſixteen horſes, and erected a warren, &c. and that they have a right of chace with plaint. Plea as to chace, not guilty to reſidue, that one of defendants is lord of the manor, of which the common is parcel, for that they put in cattle, and that one of defendants, from time whereof, &c. had warren there, and juſtifies making the coney boroughs; and then avers, that plaintiff had ſufficient common. Replication, traverſing ſufficiency of common, and preſcription to right of warren, and divers exceptions to the pleadings, 1. *Lut.* 101.	
	Plaintiff, ſeiſed of houſes and lands, had common for certain cattle in certain paſture throughout the year, and defendant having no right, put in ſheep, 1. *Br.* 24	

Wh

Where plaintiff, ſeiſed of houſes, &c. had common for all large cattle *levant*, &c. throughout the year.

Plaintiff, ſeiſed of lands, had common, and defendant *ſurcharged* lands with intention to hinder plaintiff of his common, *Her.* 207.

Plaintiff, ſeiſed of lands, had common in half *rood* or *perch* of paſture for all cattle throughout the year, and defendant erected a houſe there, 3. *Br.* 76.

By leſſee, who ought to have common in parcel of a field for two hundred ſheep every *fourth* year in which the field ought to lie freſh for huſbandry, when defendant ſowed the land in the fourth year, *Her.* 91.

By leſſee, who ought to have common in the lands which defendant incloſed, *Co. Ent.* 11. By leſſee, where defendant ploughed paſture in which plaintiff ought to have common for horſes and cows throughout the year, *Her.* 65.

By aſſignee of a term, for chaſing ſheep out of the paſture with the dogs, and not permitted to have paſture there for a time, ſo that part of the ſheep periſhed, *Her.* 164.

By a commoner, where defendant incloſed three acres of land in common for a coney borough, and there filled it with rabbits, *Her.* 125.

PLEAS.

Plea (to diſturbance of common), not guilty, *Co. Ent.* 11. 15.

Plea, that the lords of the ſeveral manors had common of paſture for cuſtomary tenements, *pur cauſe de vicinage*. Replication, *de injuria*; and traverſes preſcription, *Co. Ent.* 10.

Plea, that the proprietor of the land gave *licence* to defendant to put in his cattle; and traverſes preſcription, 1. *Br.* 250.

Plea, that J. ſeiſed of houſes and lands, had common of paſture for all cattle throughout the year, and demiſed to defendant, who put in his cattle, &c. Replication, proteſting &c. maintains preſcription in the declaration; and traverſes the preſcription alledged by defendant, *Her.* 118.

Plea (diſturbance of common by chaſing cattle), that W. ſeiſed of the manor whereof, &c. deviſed to defendant for life, who chaſed plaintiff's ſheep, damage feaſant; and traverſes the preſcription, *Her.* 175.

Plea (to ſurcharging common), that J. was ſeiſed as well of houſes and lands as the paſture in fee. Que eſtate and *non proſ.* *Her.* 208.

For that defendant incloſed the common, ſo that plaintiff could not enjoy his common, *Cl. Man.* 186.

By a copyholder who had common of paſture in a paſture called J. and B. for all his horſes and cows upon the premiſes levant and couchant for the whole year, when defendant put beaſts into the common; *per quod*, &c. *Wi. Ent.* 49. 9. *Co* 111.

DECLARATIONS.

Plaintiff, ſeiſed of meſſuages and lands, had common of paſture in L. for all his beaſts levant, &c. for the whole year, and defendant incloſed forty acres in common for a coney borough, and kept coneys there. Same for all his commonable cattle in a wood, and defendant ſo incloſed the wood that plaintiff could not enjoy his common, *Winch Ent.* 42. 76. 2. *Inſt. Cl.* 241.

For right of common for three cows, &c. and for a way right, 2. *Mod. Ent* 85.

Plaintiff, ſeiſed of meſſuages and lands, had common for a certain number of beaſts in a certain paſture every year when the fields ſhou'd be ſown and from thence after the corn carried away until the field is reſown, and when the field lies fallow for the whole year, and defendant with carts ſubverted the common, 1. *Br. Ent.* 47.

Similar, where plaintiff had common for all his large beaſts called rother beaſts, levant, &c. in a waſte throughout the year, and defendant erected hedges and ditches upon the common, and hindered plaintiff from pulling them down, *The. Ent.* 33.

Plaintiff,

Plaintiff, ſeiſed of meſſuages, &c. had common for all his beaſts in B. Fenn throughout the year, and defendant put his beaſts into the common, *Thomp. Ent.* 46.

Plaintiff, ſeiſed of meſſuages, &c. had common for all his commonable cattle, and defendant *ſurcharged* paſture, in order to hinder plaintiff from enjoyment of his common, *Rob. Ent.* 42. For erecting a mill, whereby the plaintiff was prejudiced in his common, 2. *Mod. Intr.* 88.

PLEAS.

Plea, that plaintiff had not the liberty of faldage in the fields of W. except in his lands, *Ro. Ent.* 50.

Plea that defendant was ſeiſed of the lands, and ſo incloſed, as it was lawful for him to do; and traverſes preſcription by plaintiff, 3. *Inſt. Cl.* 317. Replication, and iſſue on the preſcription.

Plea of juſtification by grant of free warren made by the dean, knights, and canons of Windſor, confirmed by act of parliament in the time of Edw. 4.; and demurrer, *Wi. Ent.* 77.

Plea, not guilty to part, and juſtifies the digging, &c. as a ſervant of A. 2. *Mo. Int.* 252. Preſcribes digging the ſoil to make neceſſary repairs. Replication, *de injuria*, &c. Rejoinder, and iſſue.

Plea, juſtification for ploughing; and traverſes the preſcription for common, 2. *Mo. Int.* 155.

Plea to diſturbing a *funeral* by preſcription, to pay ſix ſhillings and eightpence for breaking the ſoil in church; and traverſes the preſcription in the Count. Replication, and iſſue on the preſcription, 3 *Inſt. Cl.* 314.

Plea to declaration for chaſing cattle, that W. being ſeiſed of the manor whereof, &c. deviſed it to defendant for life, who chaſed the cattle damage feaſant; and traverſes the preſcription, *Ro. Ent.* 62.

Plea of juſtification for impounding a horſe, *Cl. Aſſ.* 93.

Plea to declaration for ſurcharging *common*, that before plaintiff had any thing in the meſſuages, one J. was ſeiſed as well of the houſes and lands as of the paſture in fee, which eſtate, &c. and *non. proſ.* thereupon, *Ro. Ent.* 42.

Plea to declaration for ſurcharging *common*, that he is a commoner, and juſtifies putting in his ſheep, 3. *Inſt. Cl.* 334.

Plea to declaration for incloſing common, that plaintiff's father gave H. licence to incloſe part of the common, and defendant, as his ſervant, incloſed the ſame, and ſo kept it, *Wi. Ent.* 77.

Plea to ſimilar declaration, a cuſtom for tenant in fee to incloſe lands lying in fields, and keep them in ſeveralty. Replication, *de injuria*, and traverſes the cuſtom, *Hanſ.* 23.

Plea to declaration for diſturbance of common, that A. ſeiſed of lands demiſed to S. for years, and defendant as executor of S. ploughed the ground, and traverſes the preſcription and iſſue, *Tho.* 65.

Plea to declaration for digging turf, a cuſtom that every inhabitant of an ancient houſe in G. uſed to dig turf in the faldage, and to put them on the graſs to dry for fuel to be burned in a certain meſſuage; like cuſtom for cutting furze. Replication, maintaining declaration, and traverſing the cuſtom. Rejoinder and iſſue, *Wi. Ent.* 92.

Plea, not guilty, and ſpecial verdict, *Vid.* 56. *Wi. Ent.* 69. 82.

Plea to declaration, for holding a leet, that the manor is known as well by one name as another, and queen ſeiſed of the manor had a leet which ſhe granted to A. who enfeoffed defendant's father from whom it deſcended to defendant, who held the court, &c. and traverſes plaintiff's ſeiſin. Replication and iſſue on the ſeiſin, *Ro. Ent.* 88.

Plea, not guilty and iſſue, *Wi. Ent.* 50. 83.
Plea, not guilty and verdict; as to putting in the cattle, *non cul*; as to depaſturing the graſs with defendant's cattle, guilty, *Wi. Ent.* 22.
Plea, that *common* was freehold of E. and J. who gave defendant licence to put in his cattle, and traverſe the preſcription, and iſſue, *Br. R.* 45.
Plea, that defendant had *common appurtenant* in one place for all commonable cattle throughout the year as copyholders, according to the cuſtom of the manor, and in plaintiff's land *per cauſe de vicinage*, *Tho.* 63. 3. *Inſtr. Cl.* 320.
Plea, that plaintiff had a court leet by preſcription belonging to the hundred; that plaintiff unjuſtly erected a pillory; and as to hedges, that plaintiff had *common* in lands incloſed with them; and traverſes that plaintiff had a leet belonging to the manor, *Ra. Ent.* 426. *Vet. Int.* 207.
Plea (to caſe for diſturbance of a liberty by holding the ſeſſion there), that one defendant, as bailiff of the abbot, and others, made a riot, *per quod* defendant and other juſtices held their ſeſſion within the month; by another, that he made an inquiſition of offences done out of the liberty; by the under-ſheriff, that he executed the precept of the juſtices; and by another, that he was not preſent at the ſeſſion, *Ra. Ent.* 383.

3. Diſturbance of Offices.

PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.

Declaration by the lord of a manor, claiming the *franchiſe* of *proving wills* and *granting letters of adminiſtration* within the manor, againſt defendant who was *executor* of a perſon dying within the manor, for proving the will in the peculiar court, — Mor. Pr. 345
Declaration by *pariſh clerk* of a church, on a cuſtom in the pariſh for ſo much to be paid by every occupier of yard-land and half yard-land, as ſtipend or wages, and that defendant is indebted as ſuch occupier, — — *Ibid.* 347

Plea to declaration concerning the office of regiſtrar granted, prior grant made to defendant and one B. who is dead, whom defendant ſurvived, *Wi. Ent.* 25. Special demurrer, with cauſes to declaration by herald at arms, for diſturbance in his office, *Ro. Ent.* 55.
Againſt an attorney, concerning the office of regiſtrar archdeacon of the archdeaconry of T. granted to plaintiff for life, which defendant exerciſed and received the fees thereof belonging to plaintiff, *Winch Ent.* 22. 10. *Co.* 58.
By the *ſteward* of the manor court, for diſturbance in an office granted to him for life, *Vid. Rep.* 5. *Ra. Ent.* 5. Similar, by *deputy ſteward* of B. *Re. Dec.* 138. *Inſtr. Cl.* 208. For diſturbing the ſteward in chuſing his officers, *Cl. Aſſ.* 276.
Similar, by the *earl*, in the diſturbance of office of divers manors granted to plaintiff for life by the queen, *Br. R.* 483. By the herald at arms, for diſturbance of an office granted to him by the king for life, *Reb. Ent.* 54. *Her.* 193. Similar, by the ſerjeant at arms, attending ſpeaker of the houſe of commons, *Vid. Ent.* 38.
By an *attorney*, for diſturbing plaintiff, being *town clerk*, in the execution of his office, and depriving plaintiff of his fees and the profits thereof belonging by reaſon of his office, 1. *Bro. Ent.* 59.
By an *under clerk* of the treaſury, againſt a clerk of the treaſury and keeper of the writs, for diſturbing plaintiff in the receipt of his fees and emoluments of his office, *Vid. Ent.* 18.

By

By the mayor, &c. of London, for disturbing his *deputy* in the measuring of coals. *Br. R.* 119. 3. *Br.* 66. *Her.* 102. 141.

On a *pluries mandamus*, for disturbing the plaintiff in the exercise of the office of an alderman of W. in the county of B. *Re. Dec.* 144.

For disturbance of the office of steward of several manors, granted to the plaintiff by the king for life, 9. *Co.* 42. 1. *Br.* 192. *Her.* 232.

4. Seats in Churches.

Vol. VIII. *Page*		Precedents *in* Books *of* Practice, Reporters, &c.
518.	Declaration in C. B. for obstructing plaintiff in the use of his pew, by breaking off the lock, and affixing another, and sitting therein with his family to the exclusion of plaintiff and family.	
	Declaration for pulling down plaintiff's pew, erecting a reading desk and pulpit, and making a way through the pew, - - - - -	Mor. Pr. 340
	Declaration in tort and prohibition, states that plaintiff in right of an ancient messuage, and also his predecessors have used to repair a *seat in the church* from time immemorial, which has lately been taken into a *pew* and solely used by plaintiff and family; that defendant has impeached his title to this seat by suit in ecclesiastical court, when, refusing to hear proof, the plaintiff obtained a writ of prohibition, notwithstanding which defendant proceeded in contempt, &c. - - - - -	1. R. Pr. C. B. 492
	Plea to a prohibition, denying that he prosecuted against the king's writ of prohibition, and concludes to the country. 2d, For the obtaining a writ of consultation, says, that the *pew* mentioned in the declaration was an ancient pew without the addition of any *seat taken from the church* within the memory of man, and was always solely repaired by defendant and his ancestors; and that he brought his suit in the spiritual court against defendant as an intruder, and traverses plaintiff ever repairing the pew. Replication. - - -	*Ibid.* 516

Plea, disturbance in a *pew in a church*, that defendant had a *seat* in the chancel of the church; and traverses that all the places belonged to plaintiff, 3. *Inst. Cl.* 316 *Br. R.* 96.

5. Disturbance of Ways.

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510.	Declaration in B. R. for pulling down a bridge over which plaintiff had a *right of way*; *per quod*, &c.
511.	Declaration in B. R. for obstructing plaintiff's right of way by erecting a gate. 2d Count, obstructing right

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	of way by erecting hedges and pulling down the bridge.	
516.	Declaration in B. R. againſt the *rector* of a pariſh, for not repairing a *cart way* leading to plaintiff's houſe, which he is bound by preſcription to do in reſpect of his glebe.	
519.	Declaration in C. B. againſt defendant, for erecting a gate across a *way* which led from the plaintiff's houſe to the king's highway. [Various Counts laying the obſtruction differently, and in different places]	
	Declaration for *erecting a gate, &c. acroſs a way* leading to the plaintiff's meſſuage, laying rubbiſh before the plaintiff's door and raiſing the ground, alſo for laying rubbiſh before the plaintiff's windows, whereby he was obliged to brick them up, - - - - -	Mor. Pr. 330
	For *building* part of a houſe *on a way*; alſo for erecting a privy near to plaintiff's houſe, ſo that the filth ran into it; the tenant for ſome years inſiſted on and had an abatement of rent, and at length quitted the ſame, - - - -	*Ibid.* 333
	Plaintiff preſcribes for a way through a paſſage to her room; defendant left a wine vault open, plaintiff fell down and hurt herſelf, - - - - -	Mor. Pr. 337
	Declaration in caſe at the ſuit of an attorney, for *digging* a *trench in a ſtreet*, wherein plaintiff fell and broke his leg,	2. R. P. C. B. 141
	Declaration for *ſtopping a way* to plaintiff's cloſe, -	Lill. Ent. 72
	Declaration for putting the hoys, of which defendant had the management, nigh and oppoſite to plaintiff's quay in the river Thames, and to cloſe together that plaintiff's quay was broke up, and the *paſſage for veſſels*, &c. to go out and come into the ſaid quay to unload, which likewiſe prevented plaintiff's lighters from ſailing in and about the ſaid river, - - - - - -	*Ibid.* 108
	Declaration in tort, for diſturbing the plaintiff in the uſe of his way. Plea, that one W. V. was ſeiſed in fee, that the ſaid W. V. time out of mind *had a way* from the common way in the declaration mentioned, by and through the ſaid place called B. Lane, and from that to and in the ſaid cloſe called B. Cloſe, and ſo back again, and there juſtifies as ſervant to V. and with the ſaid V.'s carts, &c. Replication, confeſſing right of way, but that defendant went further than the cloſe of V. called B. Cloſe, to another cloſe called W. L. Rejoinder and iſſue. - - -	Mod. Ent. 131
	Declaration in tort, for blocking up a lane, through which plaintiff carried his coals from his colliery, - -	*Ibid.* 133
	Action upon the caſe, for diſturbing plaintiff in the uſe of his way, - - - - - -	1. Ld. Raym. 75
	Plea, juſtification preſcribed for a way through the way in the declaration. Replication, confeſſes the way of defendant, but defendant went beyond the cloſe to which he preſcribed to have a way. Rejoinder, demurrer, and joinder, - - - - - -	3. Ld. Raym. 86

Plaintiff, by reaſon of his lordſhip, had common in the *vill* at certain times every year, and a way to lead and bring back cattle, and defendant made trenches acroſs the way, *Ra. Ent.* 616. *Vet. Int.* 197.

By a few inhabitants, for ſtopping up a way to the *vill* by logs fixed to a gate, 3. *Br.* 45.

By inhabitants of a *vill*, for ſtopping up a way leading through cloſes to houſes, by erecting a hedge, *Upp. B. P.* 120.

D. ſeiſed of houſes and lands, had a foot way, horſe way, and for carriages, from houſes and lands through defendant's lands unto the park of the ſaid D. who demiſed to plaintiff for life, and defendant ſtopped up the way by incloſing the lands, *Co. Ent*, 11.

Plaintiff, ſeiſed of ten acres of land, had a way from the highway unto the lands, and defendant obſtructed way by gates and poſts, *Aſh.* 16.

By leſſee of a cloſe, for obſtructing a way by erecting poſts and rails, *Her.* 142.

By copyholders, obſtructed in their way to market by hedges and ditches made acroſs the way in the cloſe, *Her.* 73. 102.

By a parſon, obſtructed in his way to carry off tithes, *Reg.* 105. 1. *Br.* 189.

Plea (diſturbance of a way), that plaintiff ſeiſed of lands incloſed them, as it was lawful for him to do, and traverſes preſcription, *Co. Ent.* 12.

Count in an action on the caſe, for diſturbing plaintiff in the uſe of a *way*. Plea, that one V. had a way by preſcription over the place in which, &c. to another cloſe, &c. Replication, that defendant went over the ſaid cloſe to another cloſe of plaintiff. Rejoinder, and defendant maintains his plea. Demurrer, and judgment for plaintiff, 1. *Lut.* 111.

Count in an action on the caſe, for diſturbing of a right of way adjudged bad after verdict, for that it was to claim a certain piece of land, containing by eſtimation four acres, 2. *Lut.* 1248.

Plea, preſcribing in a right of way, 2. *Lut.* 1426.

By the *vicar* of a church, for diſturbing him in his way to carry off his tithes, by making a ditch acroſs the way in the cloſe, 2. *Bro. Ent.* 9. Similar, by the *rector*, for incloſing a field, that plaintiff and his ſervants could not have ingreſs to carry off tithes, *Ibid.* 17.

By the inhabitants of a *vill*, for ſtopping up the highway leading through a parcel of land called M to R. by erecting hedges and a gate, *Vid. Rep.* 42. Plaintiff, *ratione tenuræ*, had a way, which defendant ſtopped up by raiſing a wall, *Ibid.* 56. *Cl. Man.* 173. 33. *Hen.* 6. *Dig.* 187. *Aſh.* 15. *Hir.* 207.

Plaintiff, ſeiſed of meſſuages and lands, had a way from the meſſuage to a well of water and to one acre of land, parcel of the tenements, in the field for carriages and driving of cattle beyond three acres of defendant, in which defendant made trenches acroſs the way, *Br R.* 13. 1. *Br.* 197.

Plaintiff, ſeiſed of meſſuages and of a cloſe of land, had a way for carts and carriages from the meſſuages beyond defendant's land and the aforeſaid cloſe, and the defendant ſtopped up the way by erecting a houſe, *Br. R.* 14. 1. *Br.* 200.

By *leſſee for years* where leſſor had a foot way from the meſſuages beyond the defendant's cloſe, as well to the *vill* of W. as to a well or ſpring in the cloſe, and defendant made a ditch over the greateſt part of the way, and ploughed up the way, *Br. R.* 43. 2. *Inſt. Cl.* 238. 1. *Br.* 247.

Plaintiff, being poſſeſſed of and inhabiting a meſſuage in the *vill*, had a foot way for himſelf and ſervants from the *vill* of W. in, through, and over cloſes called C. and D. to the *vill* of B. to paſs and repaſs; and defendant made ditches and trenches acroſs the way, and ſhut up the way by hedges and fences, 2. *Vent. Rep.* 285. Judgment for plaintiff.

For filling up a well, &c. *Cl. Man* 174. For making a ditch in the way, *Cl. Aſſ.* 214. For diſturbing plaintiff in a way which he had by preſcription, *Ibid.* 266.

6. Other Incorporeal Rights, Franchiſes, &c. Tolls, Ferries, &c. And Actions in Tort on Statutes.

Vol. VIII. Page		Precedents in Books of Practice. Reporters, &c.
523.	Declaration in B. R. by the poſſeſſor of an *ancient water corn mill*, in the manor of A. and to which defendants were bound in conſequence of a meſſuage they poſſeſſed within the manor for grinding their griſt, (which they uſed and ſpent within the manor), at another mill; *per quod* plaintiff loſt the profit he ought to have had from grinding the griſt. Several Counts, varying the nature of defendants obligation to the mill.	
	Declaration againſt the hundred, on the ſtatute of *hue and cry*. Plea, not guilty. *Venire* in the next adjacent hundred, in an action on the ſtatute of *hue and cry*,	1. R. Pr. C. B. 500. 510
	Declaration at the ſuit of an *attorney*, for digging a trench in a ſtreet, wherein plaintiff fell, and broke his leg,	2. R. Pr. C. B. 141
	Declaration by an *executor durante minoritate*, for procuring R. H, who was indebted to plaintiff's teſtator to confeſs a fraudulent judgment, and execution to be taken out, and his goods ſeized and taken away, whereby plaintiff was defeated of recovering the debt. Demurrer thereto, joinder, and judgment for the plaintiff, - - - - -	*Ibid.* 142. 145
	Declaration in the C. B. at the ſuit of *adminiſtrator*, againſt the *high bailiff* of the dutchy of Lancaſter, for levying the goods of plaintiff's tenant without paying him a year's rent in arrear, *contra formam ſtatuti*, - -	Lill. Ent. 46
	Declaration by a *new choſen mayor* of the city of Coventry, againſt the late mayor and *the pretended preſent mayor*, for the enſigns of mayoralty, and for a *falſe return* to a *mandamus* ſued out by plaintiff commanding him to deliver them, - - - - - -	*Ibid.* 48
	Declaration by the *new choſen mayor* of Banbury, in the county of Oxford, againſt the *late mayor*, for the charter book, enſigns of mayoralty, and for a *falſe return* to a *pluries* writ of *mandamus* ſued out, - - - - - -	*Ibid.* 51
	Declaration by plaintiff ſeiſed in fee *of a market*, and kept public weights, and had *toll*, &c. for diſturbing him in the enjoyment thereof, by collecting and appropriating the ſame to defendant's own uſe, - - - -	*Ibid.* 63
	Declaration on the ſtat. 13. *Ed.* 1. *againſt the hundred* of Hemlingford, for a robbery committed by the ſervant on the maſter's property. Plea, not guilty, and iſſue. Sug-	

geſtion,

	PRECEDENTS in BOOKS of PRACTICE, REPORTERS, &c.
geſtion, that the inhabitants of the hundred are defendant's, and intereſted, and prayer of *venire* to another hundred, -	*Ibid.* 295
Declaration againſt the *owners of a ferry boat*, for not keeping it in repair. Plea, no ſuch cuſtom, and defendants built a bridge. Replication, not permitted to paſs over the bridge. Demurrer, &c. - - - -	1. Ld. Raym. 493
Declaration in B. R. for not grinding corn at plaintiff's mill,	Mod. Ent. 183
Declaration in caſe upon an agreement in writing, that the plaintiff ſhould build a yard in the defendant's cloſe, and not lay out leſs than twenty pounds thereupon, and that the plaintiff ſhould enjoy it for his life; the plaintiff avers that he did build the yard, &c. and enjoyed the ſame for ſome years as an caſement, and aſſigns for breach that the defendant wrongfully and injuriouſly obſtructed him in his enjoyment of his ſaid caſement; and a Count in *trover*, -	2. Wilſ. Rep. 348
Declaration for erecting a new ſheep fair in prejudice of plaintiff's old fair, which he claimed under tenant in fee by preſcription, - - - - -	Lill. Ent. 30
Declaration for ſtopping up a well or pool of water in which plaintiff uſed to water his cattle, - - -	Plead. Aſſ. 106
Declaration in caſe by plaintiff, who is ſeiſed in fee of a market, and kept public weights, and had toll, &c. for diſturbing him in the enjoyment thereof, by collecting and appropriating the ſame to defendants uſe, - - -	Lill. Ent. 63

By the warden and bailiff of the liberty of P. who by letters patent from the queen conſort had execution and return of writ within the liberty, againſt a perſon who arreſted a man within the liberty, *Tho. Ent.* 42. Similar, by the lords of the hundred, againſt the *ſheriff's officer*, on a title eſpecially pleaded, *Win. Ent.* 83. Similar, by lord of the ſeven hundreds, on ſeveral breaches, *Vid. Ent.* 55.

By the mayor and citizens of York, who had execution and return of writs within the city by preſcription, againſt a ſheriff's officer, who arreſted a man within the *liberty* and impriſoned him in the priſon of the church, *Br. R.* 47. Similar, by the *biſhop*, by preſcription, *Ibid.* 88.

By the lords of a manor, who had a court of view of *frankpledge*, againſt one who held another court of view of frankpledge within the ſame *vill* by another name, *Rob. Ent.* 88.

By an abbey ſeiſed of a ferry, againſt defendant, who carried over paſſengers in his boat, *Rob. Ent.* 51. Similar, *Pl. Gen.* 18.

For erecting a new market, to the diſturbance of plaintiff's market, 2. *Saund. Rep.* 172.

By cuſtomary tenant of a mill, againſt occupier of tenements, who by *cuſtom* ought to grind at the ſaid mill, *Her.* 83.

Plaintiff, ſeiſed of ſheep-folds and right for ſheep to run in cloſe called N. for ſix hundred ſheep, when the cloſe ſhould not be ſown, and defendant incloſed the cloſe with hedges and ditches, *per quod* plaintiff could not keep his ſheep fold, *Win. Ent.* 71. 91.

The biſhop, ſeiſed of a manor, had right of faldage, and for ſheep to run in copyhold lands of defendant for ſheep not exceeding in number three hundred from feaſt day to feaſt day every year, when the cloſes ſhould not be ſown with grain, and demiſed to plaintiff, and defendant chaſed the ſheep out of the paſture, *per quod* one of them was loſt,

and the reſidue damaged, and part of the common he incloſed with hedges and ditches, *Br. R.* 65.

By the *aſſignee* of a term, who had right to common of paſture for three hundred ſheep and one ram every day for the whole day in every year, and defendant chaſed the ſheep from the paſture with dogs, and hindered plaintiff from enjoying paſture there for a time, *per quod* ſome of the ſheep periſhed, *Rob. Ent.* 62.

Plaintiff, ſeiſed of meſſuages and lands, had faldage and run for five hundred ſheep on a great briar wood or bruſh wood, called, &c. throughout the year, and defendant dug the turfs and ſod, and laid them upon the graſs to dry, *per quod* loſt the benefit of the faldage, *Win. Ent.* 91.

Plaintiff, ſeiſed of the meſſuage and lands, had common for all his beaſts levant, &c. throughout the year, and defendant erected a houſe there, and made holes or burrows for coneys, and placed hedges in and about the common to make a warren, *Win. Ent.* 82.

By the *leſſees*, who had right of common in a cloſe for all commonable cattle whatſoever for two years ſucceſſively, when cloſe ſhould be ſown after the corn carried off, and for every third year when fallow for the whole year; defendant incloſed part, &c. *Ibid.* Qu. *No reference in Cornwall's Tables.*

Plaintiff, ſeiſed of meſſuages and lands, had common in a certain paſture for four hundred and ſixty ſheep levant, &c. through out the year, and defendant, having no right, put in cattle, *Br. R.* 44.

Plaintiff, ſeiſed of meſſuages, &c. had *eſtovers* in lands for neceſſary fuel; and defendant, to hinder plaintiff of his common, cut and carryed ten cart loads of furze and briar, *per quod* plaintiff loſt the benefit of his common, *Br. R.* 73.

Plaintiff, poſſeſſed of lands, had right of faldage of all his ſheep to depaſture in all the fields of G. from day to day upon his lands, and defendant did not fold the ſheep which he put into the fields upon the lands of plaintiff as he ought, *per quod* plaintiff loſt the profits of his faldage, 2. *Vent. Rep.* 136.

For incloſing land with hedges in which plaintiff had common of paſture, *Cl. Aſſ.* 266. For erecting a mill whereby the plaintiff was prejudiced in his common, 2. *Mod. Int.* 88. For digging, &c. to the prejudice of the plaintiff's common, *Ibid.* 250.

By a copyholder, againſt the lord of the manor and others, who cut trees upon the copyhold tenements, by which plaintiff had not ſufficient *wood for fuel*, hedges, and timber for repairs, according to the cuſtom of the manor, *Br. R.* 46.

Plaintiff, ſeiſed of the manor, had common of paſture, whereof defendant incloſed parcel, and put his cattle in the reſidue, *per quod* he ſurcharged the paſture, *Aſh.* 60.

Plaintiff, ſeiſed of a manor, had feeding paſture and faldage in place called, &c. containing, &c. for ſheep, not exceeding in number four hundred, for the whole year, and defendant put in ſheep there, *Co. Ent.* 14.

By copyholders, who had common of paſture in the paſture for all cattle throughout the year, where defendant put in his cattle into the common, *Co. Ent.* 9. 9. *Co.* 112. *Her.* 117. Where plaintiff had common of paſture where defendant had before put in his cattle, 3. *Br.* 60. Where plaintiff had common after corn cut in ſeven acres of land, which defendant incloſed, 3. *Br.* 96. In four acres, incloſed by defendant, *Her.* 63. Where defendant *dug a well* in the common *into which plaintiff's horſe fell* and periſhed, *Her.* 123.

By leſſee of a copyholder, for turfs dug in a common, *Her.* 80. By another, *Ibid.* 116.

Caſe by two on a preſcription, againſt defendants for *not grinding* the whole of his corn at one of their mills; but bad, for that they ſaid *all their corn*, &c. 2. *Sand. Rep.* 113.

By the farmer of tithes, againſt the occupier of lands, where, by the cuſtom of the town, all the occupiers of lands ought to carry off their tithes to the barn called the tithe barn, *Thomp. Ent.* 74.

By

By farmer of lands, where, by preſcription, all the farmers of that farm have *liberty of faldage* for all cattle depaſturing within the commonable fields in G. from day to day upon the farm lands, and defendant put on two hundred ſheep to be depaſtured there, but did not fold them as he ought upon the ſaid lands, *per quod* plaintiff loſt the *profit of his faldage*. Not guilty pleaded, 2. *Vent. Rep.* 136.

V. Torts (by Nuiſances and other Injuries in Nature thereof)

1. Lands, &c. } in Poſſeſſion,
2. Houſes and Lights, } Reverſion, } (19)
3. Water Courſes.
4. In Nature of Waſte and for Dilapidations. (20)

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551.	Declaration in C. B. at the ſuit of *coparceners in fee* (one married) of copyhold premiſes, and the huſband of one, *for cutting down trees, digging in the ſoil*, with a	
554.	converſion. Plea, *deducing a title* through ſeveral deſcents to another perſon as tenant in tail under a *cuſtom of the manor in nature of a borough Engliſh*, as ſervant, to whom defendant juſtifies, traverſing plaintiffs ſeiſin; proteſting againſt the grant to plaintiffs, that they were not ſeiſed as alledged in the declara-	
567.	tion. Several other pleas, varying the title. The laſt a plea of juſtification of the entry under a demiſe at will to the defendant by plaintiff, leſſee from year to year.	
	Declaration, preſcription for *eatage* of a cloſe, and for a water courſe to water cattle, - - - -	Mor. Pr. 342
	For throwing water out of a *coal mine*, and *not making drains* to carry it off, whereby it ran into plaintiff's coal mine adjoining, - - - - -	*Ibid.* 349
	For erecting a *jetty or pier near a river*, whereby the water was forced againſt plaintiff's *cloſes*, and damaging them, -	*Ibid.* 353
	Declaration againſt millers, for ſhutting their gates in a river, whereby the water *overflowed plaintiff's lands* that lie near,	*Ibid.* 354
	Declaration by plaintiff poſſeſſed of a mill, defendant poſſeſſed of another with ſix bays in it, which he raiſed ſix feet higher than uſual, whereby the water overflowed and broke plaintiff's mills, &c. and *overflowed* plaintiff's *lands*, his ſheep waſhing place, &c. and for waſhing away great part of the plaintiff's cloſes; the premiſes in poſſeſſion of plaintiff's tenant, - - - - -	*Ibid.* 357
	Plaintiff, being ſeiſed of the reverſion of a cloſe, declares againſt defendant for undermining it, whereby part fell in, -	*Ibid.* 363
	Declaration for breaking down the plaintiff's fences, and continuing the ſame broken down for a long time, whereby the cattle of divers perſons *depaſturing in an adjoining common* entered and *conſumed the graſs*. Qu. If not *treſpaſs*, -	Lill. Ent. 64
	Declaration in treſpaſs on the caſe, for *ſtundering plaintiff's*	

	PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.
ground in poſſeſſion of his tenants, to the prejudice of his *reverſionary intereſt*, of which he was ſeiſed in fee, -	Plead. Aſſ. 77
For erecting a dam on an ancient river which flowed by plaintiff's meadow, whereby the water overflowed it, and carried away plaintiff's manure, &c. - - -	*Ibid.* 78
For erecting flood gates and raiſing banks in a river, &c. whereby, &c. *plaintiff's meadow* overflowed and was drowned, - - - - - -	*Ibid.* 300
Declaration in B. R. for *erecting a bay* in a river, and thereby *drowning plaintiff's land* a little above it, - -	*Ibid.* 311
Declaration for ſtopping a *highway*, whereby the cuſtomers could not come to plaintiff's collieries, and his coals were ſpoiled, - - - - -	1. Ld. Raym. 486
For *breaking down the plaintiff's incloſure*, whereby the cattle of ſeveral perſons eſcaped into the plaintiff's cloſes, -	Mod. Ent. 216
Declaration for not repairing the fences between plaintiff's cloſe, in which he had a term, and defendant's, which defendant by reaſon of his tenure was bound to repair, *per quod* plaintiff's cattle eſcaped into defendant's ground, and from thence into other grounds of plaintiff, - -	Pl. Aſſ. 254
For not repairing the fences, whereby the plaintiff's cattle eſcaped through the lands of another, and were impounded,	Lill. Ent. 69

2. Houſes and Lights.

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544. Declaration in C. B. where plaintiff, poſſeſſed of a houſe, which ſtood between two others, defendant pulled down the two houſes, whereby he expoſed plaintiff's houſe to the weather, and rendered it unfit to live in, and he was obliged to go into another houſe.

546. Declaration in B. R. for tilting a leaden box which had been placed between plaintiff's and defendant's ciſterns, for the purpoſe of carrying the *rain water* from their two houſe tops into each of them equally, and thereby conveying it wholly into that of defendant.

548. Declaration in B. R. at the ſuit of the landlord, *tenant in fee* of two *houſes*, for building ſo near to them as to obſtruct the *window lights*.

558. Declaration in B. R. plaintiff and defendant being poſſeſſed of two houſes contiguous to each other, the defendant wiſhed to rebuild his houſe, whereby *he pulled down the party wall*, which ſeparated the two houſes, by means whereof the plaintiff's houſe was laid open and his tenant quitted; defendant *did not rebuild* the wall, whereby the plaintiff loſt the profit of his houſe.

560. Declaration in B. R. by a ſugar baker againſt defendant, for *ſetting caſks in a kennel* which ran between plaintiff's and defendant's houſes, thereby preventing the

Vol. VIII. Page		Precedents in Books of Practice, Reporters, &c.
	water from running *into the common ſewer, in conſequence* of which it came in at the windows of plaintiff's fill-houſe, and ſpoiled their ſugars.	
567.	For cutting a *water pipe* which conveyed water to plaintiff's houſe, whereby plaintiff was deprived of water, and put to great trouble and expence in procuring water for his neceſſary uſe.	
571.	Declaration in C. B. by *aſſignee of a leaſe* againſt the *tenant*, for pulling down wainſcot, &c. affixed to the freehold, with a converſion.	
573. 574. 575.	Declaration in C. B. for obſtructing *door way, window lights*, and a *water courſe*, by building. Three Counts.	
588.	Declaration in B. R. for breaking down a party wall adjoining to plaintiff's houſe, whereby plaintiff's tenant was diſquieted, and refuſed to live in his houſe.	
	Declaration for erecting a gate, &c. acroſs a way leading to the plaintiff's meſſuage; laying rubbiſh before the door of plaintiff, and raiſing the ground, &c,; alſo for laying rubbiſh againſt plaintiff's windows, whereby he was obliged to brick them up, - - - - -	Mor. Pr. 336
	For building part of a houſe on a way; alſo for erecting a privy near plaintiff's houſe, ſo that the filth ran into it; the tenant for ſome years inſiſted on and had an abatement of rent, and at length quitted the ſame, - - -	*Ibid.* 337
	Plaintiff preſcribes for a way through a paſſage to her room; defendant left a wine vault open, plaintiff fell down and hurt himſelf, - - - -	*Ibid.* 337
	For digging a cellar ſo near to the foundation of plaintiff's houſe, that part of it foundered and fell in, - -	*Ibid.* 364
	For following the buſineſs of ſtarch-maker in a yard adjoining to plaintiff's meſſuage, and keeping hogs in the yard, whereby offenſive vapours and ſmells penetrated into plaintiff's meſſuage and rendered the ſame unwholeſome; for digging a pit and filling the ſame with ſtarch-makers waſh and other filth, which penetrated into plaintiff's well belonging to his meſſuage, and ſpoiled the water thereof; alſo a ſimilar injury to a well belonging to plaintiff's malt houſe, - - - - -	*Ibid.*
	Declaration in caſe againſt defendants, paviors under the commiſſioners for paving the ſtreets, for raiſing the pavement in the front of the plaintiff's houſes in Gravel-lane, by which the paſſage and lights to the houſes were obſtructed,	2. Wilſ. Rep.
	Declaration for digging ſo near the plaintiff's windows as to deprive him of the light, - - -	2. R. P. C. B.
	For ſtopping plaintiff's lights, - -	Mod. Ent. 143. Lill. Ent.
	For continuing the ſtopping up of lights, - -	*Ibid.*
	For building a ſhed on defendant's land adjoining to plaintiff's meſſuage and land, and thereby obſtructed his ancient lights. 2d Count, for keeping ſwine there and creating a nuiſance, - - - - -	9. Co. Declar.

	PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.
Declaration in B. R. for raiſing flood-gates and banks of a rivulet higher than uſual, whereby plaintiff's fulling mill could not work for want of water, - - -	Plead. Aſſ. 307
Declaration for building oppoſite plaintiff's lights, and plea of former recovery in bar, - - -	Salk. 715
Declaration for a nuiſance in building a wall which ſtopped the light and air from entering into the plaintiff's work-houſe through the window thereof, whereby the plaintiff loſt the profits of his work-houſe; poſſeſſion alledged of a work-houſe, wherein was a window time out of mind; that defendant is poſſeſſed of a parcel of land contiguous to the work-houſe, and built a wall there which ſtopped the light and air, &c. Imparlance. Plea in bar, that plaintiff hath recovered in another action for the very ſame nuiſance. Judgment in former action. Averment of the identity of the nuiſance. Demurrer, joinder. Judgment for defendant. - - - - -	1. Ld. Raym. 370
Declaration for *not repairing* a partition wall, whereby a cellar of plaintiff contiguous thereto was damaged by the filth of defendant's privy, - - - -	2. Ld. Raym. 1089
Declaration in caſe, for annoying the plaintiff by erecting a lime kiln near plaintiff's meſſuage, - -	Mod. Ent. 127
Declaration in tort, for ſtopping up plaintiff's lights, -	*Ibid.* 143
Declaration for negligently keeping his fire, whereby his neighbours houſe and goods were burnt. This action does not lie. - - - - -	*Ibid.* 144
Declaration for a nuiſance in obſtructing the light, whereby plaintiff loſt the benefit of his ſhop. Plea in bar, another recovery for the ſame nuiſance, - - -	*Ibid.* 146
Declaration in tort, for annoyance, by defendant being a ſhoemaker, in conveying his ſmell by oils and other excrements out of his houſe through a gutter made by defendant to plaintiff's houſe, plaintiff being a barber, whereby plaintiff loſt his cuſtomers, - - - -	*Ibid.* 169
Declaration in tort, for digging in ſuch manner and ſo near the plaintiff's houſe that it fell down, ſo that he was forced to remove to another habitation, and was not able to carry on his trade of a ſadler, - - -	*Ibid.* 195
Againſt a pavior, acting under authority of commiſſioners, for raiſing the pavement at plaintiff's gateway, whereby plaintiff's waggons and carts could not go in, - -	4. T. R. 794
For *not repairing* pipes, whereby plaintiff's houſe and timber which adjoined defendant's brew-houſe was damaged, -	2. Ld. Raym. 1568
Tort, for *not repairing* road through defendant's cloſes contiguous to the road and to defendant's meſſuages, which he was bound to repair as occupier, - - -	3. T. R. 766

Action for nuiſance, for erecting a ſmith's forge next to plaintiff's houſe, *per quod*, &c. 1. *Lut.* 69.

For erecting a ſtable and other buildings in diſturbance of plaintiff's garden in N. Plea, cuſtom in Norwich to erect ſuch buildings. Replication, traverſing cuſtom, and iſſue, 1. *Lut.* 91.

3. Water Courſes, (Mills). (21)
Watering Places to water Cattle.
Overflowing Lands. (See Nuiſances to Lands, *ante*.)

Vol. VIII. *Page*		Precedents in Books of Practice, Reporters, &c.
533.	Declaration in B. R. for waſhing the ſkins of divers beaſts, into which noxious liquors had been infuſed *in a ſtream*, at which plaintiff. in right of his meſſuage, was entitled to have freſh water for the uſe of his houſe, and at which he had the right of *watering his cattle*, being on the premiſes.	
535.	Declaration in B. R. at the ſuit of a *miller, againſt the occupier of another mill* lower down the ſtream, for obſtructing and penning back the water in ſeveral different ways, whereby it was turned back upon plaintiff's mill, and prevented his working it. Very ſpecial and variety of Counts.	
545.	Declaration in B. R. againſt defendant, for erecting a *wear* and mill race, and diverting the courſe of a river which uſed to run through the plaintiff's lands *where he watered his cattle*, putting him to great expence in procuring water for his cattle.	
562.	Declaration in B. R. for digging a hole, and throwing ſtones and rubbiſh into an *ancient drain*, which ran along defendant's land, and carried the water from off plaintiff's land and coal pits, by which the water was pent up and driven back into the coal pits; and for turning the water of a *rivulet* out of its uſual courſe into a certain canal, and thence into the ſaid drain from which it was forced and driven into the coal pits.	
568.	Declaration in B. R. for letting down and *continuing ſluices and wears*, thereby *diverting the ſtream, overflowing* plaintiff's *land*, ſpoiling the graſs and hedges, and drowning his ſheep.	
576.	Declaration in B. R. for erecting a *tumbling bay* above the uſual height, and thereby impeding the working of plaintiff's mills.	
593.	Record in B. R. for obſtructing and diverting a water courſe which ſupplied plaintiff's cotton-mill. Plea, iſſue, *mittimus* to county palatine of Lancaſter.	
592.	For ſtopping up a trench in his cloſe which conveyed the waſte water of a mill ſtream near to defendant's cloſe into plaintiff's cloſe, for the amelioration of the ſoil.	
577.	Declaration in B. R. againſt defendant, for diverting an ancient *water courſe*, which ſupplied plaintiff's mill.	
580.	Several Counts, diſturbing fiſhery, &c.	
	Declaration, preſcription for eatage of a cloſe, and for a *water courſe to water cattle*, - - -	Mor. Pr.
	Plaintiff preſcribes for the uſe of a *water courſe for the benefit of his land*; defendant obſtructed it by cutting a trench,	*Ibid.*
	For throwing down *a dam and diverting a water courſe*. Plea, the dam was on defendant's freehold for the purpoſe of working his water corn mill, and no other purpoſe, and	

	PRECEDENTS *in* BOOKS *of* PRACTICE, REPORTERS, &c.
his mill being burnt down, and not intended to be rebuilt, he drained the land, - - - -	2. R. P. C. B. 163
For diverting an ancient water courſe, ſo that plaintiff loſt the benefit of his mill, - - - -	Lill. Ent. 55
For diverting a water courſe from a mill, by pulling down a wear in a bank. - - - - -	Plead. Aſſ. 74
For erecting a dam on an *ancient river* which flowed by plaintiff's meadow, whereby the water overflowed it, and carried away plaintiff's manſion, &c. - -	*Ibid.* 78
For diverting plaintiff's *water courſe, per quod* he loſt the benefit thereof to his lands adjoining. 2d Count, deſcribing the water courſe differently. 3d Count, varying the deſcription, - - - - -	*Ibid.* 228
For removing *bays ſet up* in a water courſe, to the uſe of which plaintiff was entitled to water his land, and thereby diverting it from its ancient courſe, and from plaintiff's land,	Pl. Aſſ. 252
Tort in C. B. for diverting a water courſe, - -	Mod. Ent. 141
Tort in B. R. for raiſing flood-gates and banks of a rivulet higher than uſual, by which plaintiff's fulling mill could not work for want of water, - - -	Pl. Aſſ. 307

Plaintiff poſſeſſed of a cloſe of a meadow for a term of years, and the rivulet uſed to run from a certain place called W. through the ſaid cloſe into a pool, and ſo to the mill, and defendant ſo raiſed the water in the pool that it inundated plaintiff's cloſe, *Co. Ent.* 18. *Aſh.* 56.

Plaintiff, ſeiſed of ten acres of land adjoining a rivulet running to defendant's mill, and defendant ſo raiſed the water in the pool that it flowed over plaintiff's meadow, 1. *Br.* 241.

For making a bank across a water courſe, *per quod* the water inundated plaintiff's paſture adjoining, *Upt. B. P.* 300.

Plaintiff, ſeiſed of a cloſe of meadow on the ſouth part of which a rivulet run, and both the rivulets and the rains fell at the end of the meadow, and defendant diverted a water courſe, and thence inundated, *Ibr.* 203.

Plaintiff, tenant by the curteſy of a meadow near which a rivulet run, and defendant dug in the bank of the meadow, by which part of the meadow is inundated, *Aſh.* 56.

Plaintiff, ſeiſed of a manor and lands, through which he had a water courſe, and defendant by erecting a new mill and making ſtreams obſtructed the water courſe, and cauſed it to overflow the banks and run through the filth and weeds, *per quod* the water was corrupted, ſo that plaintiff's cattle and tenants could not drink of it, 3. *Br.* 71.

By leſſee of *executor* where leſſor, ſeiſed of houſes adjoining defendant's houſes, had a water courſe on the back part of defendant's houſe, and defendant erected tan pits in the curtilage, *per quod* the air and water were rendered unwholeſome, *Co. Ent.* 29.

Plaintiff, by reaſon of his tenure, had a ſeparate fiſhery, and defendant erected a dye-houſe, and cauſed the filth to run therefrom into the fiſhery, *Ra. Ent.* 442.

By leſſee of a houſe in London, who had a leaden pipe for the convenience of carrying off the water from his kitchen through defendant's court yard into the ſtreet, and defendant placed a heap of coals in his yard, near the walls of the houſe, and thereby obſtructed the courſe of the water, and the walls became decayed, *Aſh.* 43.

By aſſignee of a term in a houſe with a ſount of water and leaden conduit, where defendant fixed a leaden pipe to the conduit and diverted the water from the houſe, *Aſh.* 44.

4. In Nature of Waſte, and for Dilapidations.

Vol. VIII. Page		Precedents in Books of Practice, Reporters, &c.
582.	Declaration in B. R. by *landlord of a copyhold* eſtate againſt his tenant, for very extenſive waſte. Second Count, as tenant at will.	
583.	Declaration in B. R. by *landlord who had a life eſtate* in the premiſes againſt *tenant for years*, for pulling down outhouſes, walls, gates, &c.	
584.	Declaration in B. R. *landlord having an eſtate for life, according to the cuſtom of the manor*, in the premiſes, againſt his tenant, for ploughing ancient meadow land.	
585.	Declaration in B. R. in caſe in nature of waſte *by landlord ſeiſed in fee ſimple* againſt *tenant for years* not in actual poſſeſſion, for voluntary and permiſſive waſte in pulling down wainſcoat, and leaving premiſes in that condition at the end of the term; *per quod*, plaintiff was obliged to lay out money in repairs, as well as injured in his eſtate.	
587.	Declaration in B. R. *by reverſioner* againſt defendant, for digging mines on his eſtates.	
589.	Plaintiff, *ſeiſed in fee* of cloſe of land, for digging quarries and pits, and throwing down walls.	
591.	Plaintiff, *ſeiſed in fee* of divers lands, &c. for cutting timber.	
596.	Declaration in B. R. by *mortgagee for one thouſand years* againſt defendant, for pulling down a cottage which was in the poſſeſſion of two tenants; *per quot*, plaintiff's *reverſionary intereſt* was much diminiſhed.	
600. 603.	Againſt defendant, for ſuffering premiſes to be out of repair. Plea, not guilty.	
543.	Declaration in B. R. by *vicar* againſt his predeceſſor, for dilapidations.	
571.	Declaration in C. B. by *aſſignee of a leaſe* againſt *tenant*, for pulling down wainſcot, &c. affixed to the freehold, with a converſion.	
	Declaration in caſe for dilapidations, in not repairing chancel, parſonage-houſe, outhouſes, fences, &c. -	1. R. Pr. C. B. 489
	Declaration by *vicar* againſt *executors* of late vicar, for dilapidations, - - - - -	Lill. Ent. 2
	Declaration by preſent *rector* againſt the *executor* of the late rector of, &c. for dilapidations, *Mod. Ent.* 135. -	*Ibid.* 6
	By the preſent *rector* of a moiety of the parochial church of, &c. for the like, - - - -	*Ibid.* 6
	Declaration in C. B. by the preſent againſt the *adminiſtratrix* of the late *vicar* of a vicarage, for dilapidations, -	Pl. Aſſ. 30
	Declaration in caſe in the nature of waſte by remainder-man in fee, againſt the leſſee for life, - - - -	Mod. Ent. 20
	Declaration for dilapidations, in not repairing channel, &c. - - - - -	1. R. P. C. B. 48

Action on the caſe for dilapidations on demurrer. Court was of opinion count was bad, for that the reſignation of a prior incumbent alledged in the count was not alledged to be to the ordinary, 1. *Lut.* 115, 116.

DECLARATIONS, PLEAS, &c. UNDER THE PRECEDING HEADS OF NUISANCES TO LANDS, HOUSES AND LIGHTS, WATER COURSES, &c.

Plaintiff, seised of a mill, had a water course running in L. to the mill, and defendant broke down the bank, and diverted the water from the mill, *Cl. Ass.* 269. *Hanford.* 1. *Ent* 32. 2. *Inst. Cl.* 234. For diverting the water out of its ancient course, *Cl. Man.* 120. 2. *Inst. Cl.* 231. For obstructing a sink, *Cl. Ass.* 267. For putting lime in water to destroy fish, *Ibid.* 274.

Plaintiff, seised of two messuages and garden inclosed by a wall contiguous and adjoining to the king's highway, beyond which a stream of water use to run to a yard belonging to a brewer, and defendant, with earth and stones, obstructed the course of the water near the yard, so that the walls of the house and garden became decayed, and neither plaintiff or his tenants could go to the other house in the highway, *Wi. Ent.* 47. Special demurrer thereto.

Plaintiff, possessed of a close and meadow for a term of years, and the rain used to run from a hill into the highway, and from thence into the meadow, and defendant diverted the water course, and thereby overflowed plaintiff's close, *Tho. Ent.* 39.

Plaintiff, possessed of an ancient messuage adjoining a water course, and defendant, by throwing therein great quantities of filth, stopped the water course, by which the water run into the *houses*, and overflowed and spoiled plaintiff's goods, 1. *Bro. Ent.* 157. 2. *Inst. Cl.* 235. For raising water in a pool so high that it overflowed plaintiff's *close*; *per quod*, he lost the profits, and *trees* were spoiled, *Thomp. Ent.* 42.

Plaintiff, seised of ten acres of meadow adjoining a rivulet running to defendant's mill, and defendant raised the water in a pool so high, that it overflowed plaintiff's meadow, *Bro. Ent.* 40. or *Br. R.* 40. 2. *Inst. Cl.* 237. Similar of two closes, *Rob. Ent.* 44.

Plaintiff, seised of a meadow called, &c. on the eastern side of which there was a rivulet, and on the south side another called N. and another stream of water run into the rivulet called N. and both rivulets and the rain water fell into the bottom of the meadow, and defendant diverted the *water course*, and thereby overflowed the meadow, *Kid. Ent.* 64.

By a copyholder against a tanner, for erecting tan pits near a *stream of water* running to plaintiff's *house*; *per quod*, the water became corrupted and unhealthy, *Ro. Ent.* 66. *Her.* 254.

Plaintiff, seised of a close of pasture, beyond which there was a *stream of water* in which plaintiff had a fishery, as belonging to the close, and defendant erected a house for making alum, and threw the burnt quarries and rubbish in the water; *per quod*, the water became corrupt, the fish died, and plaintiff would not water his cattle there, *Tho. Ent.* 26.

For not repairing *sea-banks* against the flood and beating of the sea, which defendant ought to repair; *per quod*, the water overflowed plaintiff's lands, *Br. R.* 67. 2. *Instr. Cl.* 113.

For suffering the covering of a house lately erected by defendant's servant to continue a nuisance to plaintiff's house, by the rain running off defendant's house and falling upon plaintiff's house, 2. *Bro.* 57.

Plaintiff, seised of a *house and parcel of land* adjoining, and defendant possessed of a garden adjoining, in which he erected a wooden house and a building for pigs, *Rob. Ent.* 18. 9. *Co.* 57. *Co. Ent.* 19.

By the lessee of a house in the city of B. for darkening two ancient *lights*, and erecting a *wood house* in a yard adjoining, *Rob. Ent.* 7. *Her.* 1. Similar, *Cl. Man.* 57. For stopping up *lights* in London, *Wi. Ent.* 46. *Cl. Man.* 188. 2. *Inst. Cl.* 244. 247. *Rob. Ent.* 8. By an assignee of a lessee in Westminster, 2. *Mod. Int.* 87.

Plaintiff,

Plaintiff, leſſee of a houſe in London, had two ancient *lights* in the kitchen, and defendant poſſeſſed of another houſe adjoining plaintiff's houſe, and ſo ſituated that plaintiff's ancient *light* was not obſtructed, but defendant erected a new building ſo near to plaintiff's kitchen, that a great part of the light in the kitchen was darkened, *Vid. Ent.* 28. For ſtopping up the *lights* of a houſe which had ſeven windows by erecting a new edifice, *Br. R.* 34.

By a copyholder, ſeiſed of a houſe in Stepney in which he had four windows, and defendant poſſeſſed of another houſe and yard, upon which defendant erected two chimnies ſo near to plaintiff's houſe, that he not only obſtructed the light, but the rain fell upon plaintiff's land, *Tho. Ent.* 26.

Plaintiff, leſſee of a houſe in the city of B. had four windows, and defendant, poſſeſſed of another houſe and piece of land adjoining, erected a houſe on the piece of land, by which he obſtructed plaintiff's *lights*, *Vid. Ent.* 6. *Co. Ent.* 206. 1. *Br.* 230. *Her.* 98.

Plaintiff, leſſee of a houſe in London that he intended to raiſe higher, and defendant poſſeſſed of another adjoining, raiſed his houſe ſo high, that it hung over plaintiff's houſe and darkened his *lights*, *Re. Ent* 56. 3. *Ir* 46. *Her.* 197.

Plaintiff, poſſeſſed of a ſhop in which there was a window, and defendant poſſeſſed of a ſhed, which he new raiſed to hang over plaintiff's ſhop, and darkened the light, *Wi. Ent.* 46.

Plaintiff, ſeiſed of a houſe before the great fire, which was burnt, and defendant poſſeſſed of another houſe adjoining, that in raiſing pieces of timber which he placed tranſverſely; *per quod*, plaintiff was hindered from building, *Vidian's Ent.* 11.

Plaintiff poſſeſſed of a houſe, and defendant poſſeſſed of another ruinous houſe adjoining, defendant pulled down the ruinous houſe; *per quod*, a great part of plaintiff's houſe fell, and the remainder came to pieces, *Thomp.* 38.

Plaintiff, ſeiſed of a houſe and curtilage, and defendant ſeiſed of a houſe and curtilage adjoining; defendant dug a lime pit in his court, *ſo near to plaintiff's court*, that parcel of the houſe and an aſh tree belonging to plaintiff growing in the court, and a great part of the earth, fell into the lime home, 2. *Sand. Rep.* 397. *Aſh.* 47.

Plaintiff, leſſee of a cook room in London, part over a ſhop, and the paſſage of defendant's houſe ſupported by a brick and wood wall, and poſts fixed up, defendant pulled down the wall and poſts; *per quod*, the cook room fell, *Vid. Ent.* 65. *Her.* 204.

By leſſee of a houſe and lands, and defendant ſeiſed of houſe and lands adjoining, ought to keep *fences* between the houſes, which were out of *repair*, 1. *Bro. Ent.* 28. *Cl. Man.* 25.

Plaintiff, ſeiſed of a *cloſe*, and defendant poſſeſſed of a cloſe adjoining, was bound to make hedges between the cloſes, *For default of which* the beaſts of ſtranger entered, *Thomp. Ent.* 35. Similar, where plaintiff ſeiſed of ten acres of land, and defendant ſeiſed of two acres adjoining, *Rob. Ent.* 52.

By the *vicar* of a church againſt the *executor* of his predeceſſor, for dilapidations.

Plaintiff, ſeiſed of a cloſe, and defendant ſeiſed of a cloſe adjoining, defendant was bound to *keep up hedges* between the cloſes, in defect of which plaintiff's beaſts ſtrayed out of the cloſe into another cloſe, damage feaſant; *per quod*, plaintiff was put to great expence, 1. *Bro. Ent.* 66. Similar, to keep up fences between two houſes, *Ibid.* 28.

Plaintiff, leſſee of a cloſe, and defendant ſeiſed of a cloſe adjoining, was bound to incloſe it with walls, which *were out of repair*; *per quod*, defendant's beaſts entered through defect of the wall, and plaintiff loſt the profit of the cloſe, *Br. R.* 20. Similar, to incloſe with fences between the cloſes, *Ibid.* 486. 2. *Inſt. Cl.* 115, 116.

For not repairing fences adjoining a common; *per quod*, plaintiff's cattle strayed out of the common into defendant's closes and closes of other persons, and were impounded, whereby plaintiff lost the profits of his cattle and common, and expended money for law charges in defence of suits, *Br. R.* 62.

By the lord of a manor, for erecting a bake-house in a market town, when plaintiff had a *bake house*, and found a baker who baked bread for all the inhabitants within the town, and for other subjects there passing, and that no other ought to bake bread without plaintiff's licence, 1. *Bro. Ent.* 46.

Against the farmer of a mill, for that through *want of repairing* the banks of the mill pool water overflowed plaintiff's lands, *Cl. Man.* 178.

For a nuisance by overflowing plaintiff's meadows for want of repairing the bank of a certain piece of land of defendant inclosing water for the mill, *Re. Dec.* 99. For *not repairing* banks of a water course running to plaintiff's mill; *per quod*, plaintiff lost the profits of his mill, *Cl. Ass.* 210. For *not repairing* a gutter between two houses, *Ibid.* 268 *Reg.* 104. *Ass.* 16.

Plaintiff, lessee of houses in London, in which there was an an ancient window, and defendant, who owned the court-yard adjoining, obstructed by putting up boards, *Ass.* 42.

For building a house so near plaintiff's ground that the rains fell on plaintiff's ground from plaintiff's house, *Ra. Ent.* 442.

For erecting a horse mill to the annoyance of plaintiff's free mill, *Ra. Ent.* 9.

J. seised of houses, &c. to which he had common, demised to plaintiff, who put his horse there through *defect of defendant's ditches* between his close and the common, perished in the mud, *Ass.* 41.

For digging a well in a common, into which plaintiff's horse fell and perished, *Her.* 123.

Against churchwardens, for *not repairing* a gutter between the church and plaintiff's tenement, *Ra. Ent.* 10. *Vet. Int.* 155.

For *not repairing* a bank near the river; *per quod*, the water inundated the lands adjoining, 29. *E.* 3. 32.

For not repairing ditches, 46. E. 3. 1. 12. H. 4. 7.

By lessee of houses and lands, and defendant seised of adjoining houses, ought to make fences between the hedges that are out of repair, 1. *Br.* 263.

Plaintiff, seised of a close for life, and defendant seised of one adjoining, ought to make hedges between the closes, through defect of which the cattle of other persons entered, and plaintiff's cattle went out of their own close, *Her.* 61.

Plaintiff, seised of six acres of land, and defendant seised of two acres of land adjoining. *Her.* 190.

By the rector of the church against the *executor* of a prior rector, for repairs of houses of rectory unfinished, *Her.* 136.

By lessee of a house, court, and garden, against a butcher, occupier of a slaughter-house and court, who raised the court, and made a gutter, into which he threw blood and filth of cattle killed, and made the same to run into the court-yard and garden of the plaintiff, *Her.* 236.

By baker, lessee of the lower part of a house, against a person lodging in the chambers over, for causing urine and other filth to descend into the flour and bread of plaintiff, *Ass.* 47.

By a butcher, having a shop near which defendant put his dirt, &c. by which the dogs of plaintiff were impaired by the dust, *Ass.* 49.

Plaintiff, seised of a garden inclosed with a brick wall, and defendant erected his *privy* adjoining the wall, and put earth to the wall through which it fell, and the filth entered the garden, *Ass.* 43.

For making a sink so near plaintiff's house, who was a barber, that defendant, who was a shoemaker, threw his stinking water into which run into *plaintiff's court*, *Rol. Ent.* 42. *Her.* 180. 208.

Againſt the tenant of a houſe, who ſuffered the ſtinking water to run from the kitchen into plaintiff's cloſe; *per quod, he himſelf*, plaintiff, his ſervants, and cattle, became infected and corrupted in divers parts of their bodies, 1. *Bro. Ent.* 44.

Plaintiff, ſeiſed of a *houſe and garden*, and defendant poſſeſſed of a brewhouſe adjoining, converted the brewhouſe into an alehouſe; *per quod*, plaintiff loſt the pleaſantneſs of his houſe and garden, *Vid. Ent* 13.

Defendant erected a ſhed for melting of tallow ſo near plaintiff's houſe that plaintiff could not inhabit it, *Ibid.* 11.

Defendant kept a furnace for lime; *per quod, the graſs and fruit of plaintiff's garden* were ſpoiled and withered, *Cl. Man.* 150.

For breaking down banks, ditches, and water diverted from the mill, *Ra. Ent.* 291. *Aſh.* 45.

Plaintiff, ſeiſed of two ancient and ruinous *fulling mills*, to which the great part of the river uſed to run, erected two *corn mills* in their place, and defendant broke down the banks, and diverted the water, 4. *Co.* 84.

For diverting a great part of the water from mill by raiſing a poof through the water courſe and ditch, *Dy.* 248.

Plaintiff, ſeiſed of a mill and ten acres of meadow adjoining a ſtream, and the ſtream run to the mill, and defendant obſtructed the water in its courſe by erecting flood gates, and made water to overflow the meadow, 3. *Br.* 62. *Her.* 133. By leſſee of a mill, for diverting by making a rivulet, 3. *Br.* 45. By leſſee of a mill, for water diverted from a mill newly erected, *Her.* 82. For a mill erected by defendant ſo near plaintiff's mill, that the water flowed back upon the wheel of the mill, ſo that it would not go round, *Her.* 126.

For digging ſo near the foundation of plaintiff's houſe that great part of the ground fell, ſo that he could not exerciſe his art and buſineſs for eleven months, 3. *Lev.* 172.

By remainder-man in fee, for waſte done by tenant for life of copyhold, 3. *Lev.* 128.

For ſtopping up a well from which plaintiff drew water, &c. *Cl. Man.* 174.

Where defendant took away *metes* and bounds, by which plaintiffs and the lands of another perſon were ſeparated, 3. *Lev.* 176.

Caſe for treſpaſſes in plaintiff's cloſes on divers days and times; *per quod*, plaintiff could not take the profits, *Clif.* 88.

By vicar againſt *executor* of preceding vicar, for dilapidations, *Ro. Ent.* 87. *Mo. Int.* 103.

PLEAS, &c.

Plea, that the rector and churchwardens of the church in London demiſed houſes to defendant, who agreed to build, &c. and that by the cuſtom of the city he built in the ſoil, although they ſtopped ancient lights. Demurrer, *Co. Ent.* 20.

Plea to raiſing a court, and making a gutter by a butcher *non cul* to the gutter, and repaired ancient gutter in decay, and that by preſcription he has a water courſe or canal from defendant's houſe over the court and garden of plaintiff into a common ſewer. Replication, that he made a gutter to carry off the blood and filth; and traverſes the preſcription for the water courſe, &c. *Lev.* 237.

Plea, *non cul. Co. Ent.* 18.

Plea to declaration for raiſing banks, that defendant uſed to put turfs upon each ſide of the pool to raiſe the banks for the preſervation of the water; and traverſes that by reaſon of raiſing the bank, plaintiff's cloſes were inundated, *Ro. Ent.* 45.

Plea, cuſtom of London, that if a man built on an ancient foundation, he can obſtruct the ancient lights. Replication, no ſuch cuſtom, and trial by the mouth of the recorder, *Vid.* 29. 3. *Inſt. Ci.* 378. *Br. R.* 100.

Plea, that defendant, poſſeſſed of a houſe and curtilage in the city of B. and for neceſſary uſe, erected *cumulum faſcinum* in the curtilage; and traverſes the preſcription of the *lights*; iſſue on the traverſe, *Ro. Ent.* 8.

Plea to declaration by lord of the manor againſt a perſon who erected a common baking-houſe within the manor, that before the erecting of the baking-houſe he ſerved as an apprentice to a baker for ſeven years, and being ſeiſed of a meſſuage in the ſame vill, erected a baking-houſe for public uſe, 1. *Bro.* 47.

Plea, protesting, denies the uſage, but juſtifies as ſervant of rector; and traverſes the want of reparations of the cemitery. Replication, and iſſue on the traverſe, *Ro. Ent.* 45.

Plea of not guilty to an action for digging ſo near the plaintiff's ſoil, *recovery in a former action* of treſpaſs for the ſame, *tort* and damages, 3. *Lev.* 173.

5. Conſequences of Public Nuiſances.

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566. Declaration in B. R. at ſuit of ſugar-baker, for *ſetting caſks in a kennel* which ran between plaintiff's and defendant's houſes, thereby preventing the water from running *into the common ſewer, in conſequence* of which it came in at the windows of plaintiff's ſaid houſe, and ſpoiled their ſugars.

6. Not repairing Fences, &c.

	Precedents *in* Books *of* Practice, Reporters, &c.
Declaration for negligence in the defendant's being poſſeſſed of a cloſe and coal-pit, ought to have repaired their fences, plaintiff's calf eſcaped out of the adjoining cloſe into defendants, and fell in the pit, - - - -	Mor. Pr. 436
Declaration for not repairing fences dividing plaintiff's from defendant's premiſes, and alledges a cuſtom for defendant to repair, - - - - -	1. R. P. C. B. 131

7. Not carrying away Tithes.

Declaration in caſe for not fetching away tithes, againſt a rector, - - - - - -	Mor. Pr. 398
Declaration by the occupier of graſs land againſt the rector of the pariſh, for not carrying away tithe hay ſet out after notice, but ſuffering the ſame to ſtay to the prejudice of the land, - - - - - -	Lill. Ent. 19
Declaration in caſe by the occupier againſt the rector, for not taking away his tithes ſet out and divided, -	Mod. Ent. 214

8. Torts not Reducible, &c.

	PRECEDENTS in Books of PRACTICE, REPORTERS, &c.
Declaration for that plaintiff retained defendant, a carpenter, to repair a house before a certain day, but did not perform the work; *per quod*, the plaintiff's house was damaged, and to use old materials; but defendant, instead of using these, made use of new, whereby, &c. (Vide the Report.)	5. T. R. 14
Tort for hindering an inhabitant and vestryman to meet the vestry of the parish in a house where the vestry was met,	2. Ld. Raym. 138

Action on the case on a return of a mandamus, 2. *Lut.* 1012.

Against the vicar, for pronouncing plaintiff excommunicated, and thereupon disturbing plaintiff coming to church, when he had not been excommunicated, *Tho.* 59. 2. *Siro.* 20.

For taking and impounding sheep in a private place, that by close impounding, part of the sheep died, and the residue were damaged, *Ro. Ent.* 87. For impounding in different places, *Vi. Ent.* 89. 2. *Instr. Cl.* 179.

For prosecuting a writ of outlawry after outlawry; outlawry reversed, *Br. R.* 18.

For causing plaintiff to be arrested *per ifflamia* in London, *Cl. Aff.* 213.

By soap-maker, on statute 21. Jac. against monopolies, and for assault, imprisonment, and detention in prison until he paid money for his redemption, and made a deed to the society of soap-boilers, also for taking his goods and chattels, and hindering him in the use and exercise of his art or mystery aforesaid, *Vi. Ent.* 36.

For cutting the tails and necks of the horses of plaintiff, *Cl. Man.* 180.

For withholding and detaining evidence delivered to him to keep, *Cl. Aff.* 212. Destroying fish, *Ibid.* 274.

Against defendant, for not accepting a common appearance, where the debt was under ten pounds, 2. *Mo. Int.* 106.

Plaintiffs agreed to sow the lands of each other a moiety, and defendant made a trench, and drew the water from defendant's lands to the lands sown, *Her.* 115.

Against *overseers of the poor*, who for four shillings and sixpence assessed on plaintiff unpaid, distrained plaintiff's best cow, and sold her to another by covin for fifty three shillings and fourpence, where defendant had divers cattle of a less price and did not render to plaintiff the surplus, *Her.* 233.

For loosening a ship's rope belonging to plaintiff; *per quod*, the ship floated towards a bridge and was damaged, *Her.* 213. *Ro. Ent.* 47.

For enticing plaintiff's apprentice, and procuring him to leave his service, *Her.* 7[illegible] 1. *Bro.* 67. *Vid.* 85. 2. *Sand.* 169. 2. *Inst. Cl.* 199. His servant, *Her.* 243. *Vid.* 85. *Cl. Man.* 73. 171. 2. *Instr. Cl.* 101. *See* ante.

For inviting plaintiff's apprentice often to absent himself from plaintiff's service and to play with defendant at unlawful games, at which he lost money to plaintiff, *Her.* 160. *See* ante.

Plaintiff possessed of four iron manufactories and furnace, and one thousand cords of wood, and defendant carried the fuel out of the wood where it lay; *per quod*, plaintiff could not make up the iron. *Co. Ent.* 36.

For *waste* done after judgment, and before seized obtained, *Reg.* 77.

Ag[illegible]

...inſt the lord of the manor, for cutting down trees in copyhold lands of plaintiff, ... *Br.* 252.

...nant for life againſt tenant at will, for cutting down trees, 1. *Br.* 255. *Her.* ... 1. *Bro.* 28. *Ro. Ent.* 77. *Br. R.* 48. For deſtroying the ſtable, &c. *Mo. Int.* ...

...forging a deed to diſturb plaintiff in lands purchaſed, *Ra. Ent.* 253.

...ecutor, for forging a will, *Ra. Ent.* 358.

... an innkeeper, who ſold plaintiff's horſe delivered to him to keep, *Upp.* 231.

... horſe to be rode by him, *Her.* 243.

...or againſt leſſee at will, for cottage burned by negligence, *Aſſiſ.* 56.

...rd of the manor ſeiſed of the manor held of ancient demeſne againſt defendant, ... levied a fine in the court of our lord the king of his tenements held of the ma... and that tenements became impleadable at common law to diſinherit plaintiff, ... *R.* 25.

...iffs, &c. of a borough and ancient town of G.; and demurrer, *Vi. Ent.* ...

...and heir, for forging a will to diſinherit him, 1. *Bro.* 25.

...izor of ſtatute merchant againſt cognizee, who after execution had of the ... and ſatisfaction thereon, took plaintiff, *Reg. Jud.* 37. And where he de... lands in ſatisfaction of the debt, *Reg. Jud.* 37. Where he paid the debt, ... got an acquittance, *Ibid.* 37. Where plaintiff paid the debt, and cognizee ...ered the deed under the name of an acquittance, and afterwards took plaintiff ...deed which was forged, *Reg.* 62.

...ging an indenture to moleſt plaintiff in lands purchaſed, *Ra. Ent.* 357. By ...ge of a will forged, *Ibid.* 358.

... defendant, who by the name of R. Carew recovered damages againſt plain... and another, and by the name of R. Carew obtained a *ca. ſa.* and cauſed plain... to be taken thereon, 1. *Br.* 254.

... a counſellor, who revealed plaintiff's ſecrets; *per quod*, he was vexed in poſ... of the lands, *Ra. Ent.* 2. *Vet. Int.* 22.

... a counſellor, who being retained, procured an eſtate to be made to plaintiff's ... and afterwards retained by another procured formedon to be brought againſt ...iff, and impleaded againſt plaintiff on the trial, and afterwards diſcontinued ...rit, *Ra. Ent.* 2. *Vet. Int.* 51.

... a vicar, for *neglecting* to perform divine ſervice within the *ſcitum* of the ma... *Co.* 72. *Ra. Ent.* 2. Againſt an *abbot*, *Vet. Int.* 117. *Ra. Ent.* 3. 418.

...man claiming to be villain, *Ra. Ent.* 287. 680. *Vet. Int.* 66.

...dge detained after tender, *Ra. Ent.* 8. 3. *Br.* 106.

...aining a writing concerning lands detained by plaintiff, *Ra. Ent.* 5.

...aring a bond delivered to be kept, *Ra. Ent.* 7. *Vet. Int.* 20. *Upp.* 238.

...ing a ſeal of a writing delivered to be peruſed, *Ra. Ent.* 7. *Vet. Int.* 163.

...band and wife, daughter of a citizen of London, againſt *executor* of the ...ther's portion due to the wife by the cuſtom of London, and detained, 1. *Br.* ...

...ſlander againſt defendant, for uſing too great familiarity *with his wife*, by ... and careſſing her, ſo that plaintiff thereupon became ſcandalized and hin... in his ſhop and trade, *Upp.* 243.

...churchwardens, who had uſed to cut trees in the church-yard to repair the fences ...the church-yard, and defendant, by the command of the rector, cut the trees ...carried away the wood, *Ra. Ent.* 44. *Her.* 210. By an abbeſs againſt the ... of the manor, for threatening ſuitors to her mill, *Br. R.* 17.

... ſeiſed of houſes by preſcription, repaired the iſle of the church, and had ...ful burial for his family there, and defendant, the vicar, hindered plaintiff ...ailing the curb in the iſle until he paid ſix ſhillings and eightpence, *Co. Ent.* 8.

...diſturbance of execution of ſtatute ſtaple, by ſhutting the door of the houſe againſt

againſt the ſheriff and jury charged, ſo that they could not ſee the goods, *Co.* 12.

By copyholders againſt the lord of the manor, who cut trees on the cuſtomary m-nts; *per quod*, plaintiff hath not ſufficient fuel for hedges and wood for repa- according to the cuſtom of the manor, *Her.* 226. 1. *Br.* 252.

The king granted to plaintiff the rectory within the tower of London, and defe- hindered plaintiff from entering the church to celebrate divine ſervice, and ta- profits thereof, *Her.* 87.

PLEAS, &c.

Plea, that defendant, by retainer, provided victuals when he ſent the proc- and traverſes that he was attending on his own buſineſs, *Ru. Ent.* 473.

Plea, that it was the duty of the *cuſtos brevium* to indorſe the three laſt proclam- of the fine; and traverſes that it was the duty of the chirographer to indo- the proclamations, *Co. Ent.* 17.

Plea (to carrying away wood prepared for the manufacture of iron), that T. him one hundred cords of wood to be cut, &c. Replication, that T. ſold wood before to S. who ſold to plaintiff. Rejoinder, maintaining the bar; a- verſing that T. ſold the wood to S. *Co. Ent.* 56.

Plea to an action brought againſt defendant, who had ſpoiled plaintiff's hogſ- filled with wine (laying in the ſtreet before plaintiff's houſe) with his carriage horſes, that the hogſheads were put in the highway which narrowed the paſſa- carefully paſſing with his carriage he gently moved one of the caſks. R- cation, *de injuria*, &c. by reaſon of which one of the caſks fell in the mire was broken and ſpoiled, and wine loſt; and iſſue thereon, *Br. R.* 92.

Plea, that defendant was poſſeſſed of a houſe by demiſe, and had goods in the and to keep poſſeſſion of the houſe and goods, that the door againſt the ſheri- jury was charged upon the *extent* againſt another. Replication, maintaining declaration, and confeſſing part of the bar; with averment. Demurrer, *Co.* 13.

Plea, proteſting that plaintiff *was not held to repair the* iſle in the church, and to a ſeat there, for plea, that every vicar has had ſix ſhillings and eightpence breaking the ſoil in the church or chancel; and traverſes preſcription to the place, *Co. Ent.* 8.

Plea to tort by churchwarden of trees cut in a cemetery, which by cuſtom were repairs of the cemetery, that defendant the rector being ſeiſed of the cemetery right of the rectory cut the trees; and traverſes that the fences of the ceme- want repair, *Her.* 210.

Plea to caſe by overſeer of the poor, for a cow unlawfully ſold, and ſurplus no- dered to plaintiff; as to all except ſurplus *non cal.* and as to that tender. Re- tion, did not tender, *Her.* 235.

Addenda—TROVER. (*See* ante.)

For goods, *Vid. Ent.* 265. *Cl. Aſſ* 200. In an inferior court, 1. *Bro. Ent.* 38- For goods and chattels, *Wi. Ent.* 31. *Mo. Int.* 13. 2. *Vent. Rep.* 63. *Re. Dec.* *Wilk.* 285.

Againſt two, where one is waived, *Brown's Meth.* [illegible].

By an *attorney* by privilege, *Wi. Ent.* 108. 3. *Br.* [illegible]. Againſt an *attorney* for 99. Againſt an *attorney*, for divers goods, houſehold ſtuff, and other [illegible] *Bro. Va. Me.* 52. For a horſe, *Vid. Ent.* 8. For a gelding, *Ibid.* 268. *Cl.* 232. For an ox, *Co. Ent.* 38. 40. *Wi. Ent.* 61. *Treatiſe on Tro.* 137. For oxen, *Wi. Ent.* 32.

For a cow in an inferior court, *Treat. on Tro.* 155. For a silver cup, *Ibid.* 142. *Thomp. Ent.* 32. For a silver salt seller by an *attorney* by privilege, *Reb. Ent.* 24.
For a silver cup, *Cl. Aff.* 233. For some pieces and rings of gold, *Re. Dec.* 421. For an adamant, *Ibid.* 422. For a reclaimed hawk with bells, *Dy.* 306. *Upp.* 239. *Her.* 104. 243. *Tho. Ent.* 33. For woollen cloth, *Re. Ent.* 69. *Cl. Aff.* 232. For a gold ring, *Upp.* 234. 1 *Bro. Ent.* 355. For Brazil wood brought from part of Spanish dominions, *Rob. Ent.* 451. For a ship and goods, *Br. R.* 69. For an ox, *Vid. Rep.* 264. For a bond against an *attorney*, 1. *Bro. Ent.* 356. *Treat. on Tro.* 142. Similar for an infant by guardian, *Bro. Meth. Nov.* 19. For a bond which defendant entered into to plaintiff, 1. *Bro. Ent.* 355. For a bag of leather, and monies numbered in it, *Ibid.* 356. *Treat. on Tro.* 141. For fifty pounds weight of wool, 1. *Bro. Ent.* 358. For monies numbered, *Re. Dec.* 423.
For monies numbered, which defendant wrongfully got from plaintiff's wife at cards, *Vid. Ent.* 265. By *administrator*, for money lost by intestate, 2. *Sand. Rep.* 137. By *executor*, for cattle lost and converted in testator's lifetime, *Her.* 122. *Vid. Ent.* 264. *Thomp. Ent.* 31. *Rob. Entr.* 452. By *executor* of *executor* for goods, *Ibid.* 450.
By executor, for goods lost in lifetime of testator, and come to hands of defendant since his death, *Her.* 243. *Rob. Ent.* 447. *Mod. Intr.* 16. Similar by *husband and wife* executrix, *Ibid.* 16. For money lost by the wife at a game of cards called noddy, *Treat. on Tro.* 143. Similar by *baron and feme* executors, *Lev. Entr.* 32.
By executor for goods, of which testator died possessed, and which came to defendant's hands after his death, *Rob. Ent.* 80. *Mo. Intr.* 15. *Treat. on Tro.* 145. 152.
By administrator in B. R. *Ibid.* 152.
By *administrator*, for goods lost by intestate, and found after administration committed, *Her.* 87. 122. *Thomp. Ent.* 32. Similar for a bond lost by intestate in his lifetime, and came to defendant's hands since his death, *Vid. Ent.* 265.
Similar for a corslet, pike, sword, belt, &c. *Ibid.*
For Flemish money lost by two, one of whom died after the conversion and exhibiting of the bill, *Rob. Ent.* 445.
By administrator of goods and cattle of intestate lost after administration committed; which come to defendant's hands by finding, and converted them, *Mod Intr.* 17, 18. *Treat. on Tro.* 148.
Plaintiff, as servant of an earl, was possessed of goods which he lost, and which came to defendant's hands by finding; and he sold them; with an averment, that by means thereof he lost his service, *Mod. Intr.* 14.
By the king of Spain, for Brazil wood lost, *Ro. Ent.* 451.
By assignee of commissioners of *bankrupt*, for goods and chattels, 2. *Vent. Rep.* 63, 156. Demurrer thereto, 66. 2. *Mod. Intr.* 81.
Trover by a surviving merchant, *Lev. Ent.* 19.
For one hundred cart-loads of wood and forty beech trees, *Co. Ent.* 41.
For corn in the sheaf set apart for tithes, *Mod.* 483.
For a Flanders merchant, *Upp.* 333.
Plaintiff pollicited as goods which he lost, and which came to defendant's hands by trover, who sold them, *Ra. Ent.* 5. *Dy.* 121. *Her.* 149. 251.
By administrator, for goods and cattle lost by intestate, and which came to his hands after his death, *Co. Ent.* 38.

PLEAS, &c.

Plea of not guilty, 1. *Bro.* 358. *Bro. Met.* 20. *Wi. Ent.* 33.
Not guilty to part, to reliade *another action in bar and recovery* thereon.
Plea, *statute of limitations*, *Tre. Tro.* 159.
Plea, that defendant, bailiff of a manor in which the lord had waifs in the county of Middlesex, took the cattle there *waived*; and traverses that he is guilty in London. Demurrer special, *Vid.* 8. 3. *Br.* 485.

Plea, that plaintiff *licenſed* a ſtranger to pledge the goods as a ſecurity for the mo[ney] borrowed. Replication, and iſſue on the licenſe. *Tre.* 11. 3 *Inſtr. Cl.* 300.

Plea, that he took the mare as an *eſtray*, and made proclamation and put her to [the] paſture, *becauſe plaintiff will not pay* defendant's for paſture, damage-feaſant; ſhe eſcaped, 3. *Inſtr. Cl.* 295. Replication, tender of thirteen ſhillings and fo[ur] pence for *amends*, which defendant refuſed. Rejoinder, preſſing amends [was] not ſufficient; for plea, did not tender, *Ibid.* 298. *Br. R.* 94.

Plea to trover and converſion of a horſe. Juſtification as bailiff of head and [fellows] of the King's College, Cambridge. Special demurrer. *Br. R.* 102.

Plea, that defendant bought the things in an open ſhop in London. *Tho. Ent.* [and] averments. *Tre. Tro.* 156, 161. A ring. *Upp.* 234. 1. *Bro.* 258. 5. *Co.* 83.

Plea to trover for a gold ring; with traverſe that he did not know the ring was [the] defendant's ring. *Ro. Ent.* 30. 3. *Inſtr. Cl.* 204. Like plea, with averments. [Re]plication, maintaining plea; and traverſes the ſale on *the time of the bargain*. [De]murrer ſpecial. *Ro. Ent.* 21. *Her.* 252. Like plea for ſoap bought at Weſtminſter. Like replications; and traverſe and iſſue, *Ro. Ent.* 449. Plea of four ells of [pa]per bought at K. Replication, *de injuria*; and traverſes ſale in *market overt*, and [iſ]ſue, *Ro. Ent.* 449. 1. *Bro.* 158. That goods were bought in *market overt*, [and] [iſ]ſue. 1. 3. *Inſtr. Cl.* 293.

Plea to declaration for three boxes, that they were pledged to defendant by plaintiff for twenty-two pounds with intereſt. Replication, maintaining declaration; and traverſes the pledging. *Ro. Ent.* 43. Rejoinder, and iſſue on the traverſe. *Her.* 290.

ERRATA ET ADDENDA.

Page 157, at top, *for want of judgment* read *judgment for want of plea.*

Page 303, margin at bottom, dele *not.*

Page 373, margin at bottom, for *conſtauration* read *converſion*, and dele *ditto*, *ditto.*

Page 397, margin at bottom, after *declaration in* read *tort for.*

Page 405, at top, for *Carriers* read *Deviation*, *Navigating Ships.*

Page 425, margin, after *ſhip of defendant, and the* read *quay of the.*

Page 445, and 459, margin, for *ſheriffs* read *ſheriff.*

Index, page II, under the head Miſcaſance, for *taking pledges in Replevin* read *taking inſufficient pledges in Replevin.*